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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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	:	
<b>In re</b>	:	<b>Chapter 11</b>
	:	
<b>SEARS HOLDINGS CORPORATION, et al.,</b>	:	<b>Case No. 18-23538 (RDD)</b>
	:	
<b>Debtors.<sup>1</sup></b>	:	<b>(Jointly Administered)</b>
	:	
-----X		
<b>VIR VENTURES, INC. and</b>	:	
<b>AMI VENTURES, INC.,</b>	:	
	:	
<b>Plaintiffs,</b>	:	<b>Adversary Proceeding</b>
	:	
<b>-against-</b>	:	<b>Case No. 19-08700 (RDD)</b>
	:	
<b>SEARS HOLDINGS CORPORATION, et al.,</b>	:	
	:	
<b>Defendants.</b>	:	
	:	
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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); SR – Rover de Puerto Rico, LLC (f/k/a Sears, Roebuck de Puerto Rico, Inc.) (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

**DECLARATION OF JENNIFER BROOKS CROZIER, ESQ.  
IN SUPPORT OF THE DEBTORS' (I) MOTION TO DISMISS THE ADVERSARY  
COMPLAINT AND (II) REPLY TO PLAINTIFFS'  
OPPOSITION TO DEBTORS' SECOND OMNIBUS CLAIMS OBJECTION**

Pursuant to 28 U.S.C. § 1746, I, Jennifer Brooks Crozier, hereby declare and state as follows:

1. I am an associate at Weil, Gotshal & Manges LLP and counsel for the Debtors in the above-captioned proceeding.

2. I submit this Declaration in support of the Debtors Motion to Dismiss the Adversary Complaint and Reply to the *Joint Response of VIR Ventures, Inc. and AMI Ventures, Inc. in Opposition to Debtors' Second Omnibus Claims Objection* (ECF No. 5056), filed concurrently herewith.

3. Attached hereto as **Exhibit A** is a true and correct copy of pages 1 to 41 of the transcript of the February 24, 2020 omnibus hearing held in the above-captioned case before the Honorable Robert D. Drain, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Southern District of New York.

4. Attached hereto as **Exhibit B** is a true and correct copy of AMI Ventures, Inc.'s ballot to opt-in to the Administrative Claim Program, Ballot No. 182353801039931, dated November 18, 2019.

5. Attached hereto as **Exhibit C** is a true and correct copy of VIR Ventures, Inc.'s ballot to opt-in to the Administrative Claim Program, Ballot No. 182353801040864, dated November 18, 2019.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing  
is true and correct.

Dated: March 2, 2020  
New York, New York

/s/ Jennifer Brooks Crozier  
Jennifer Brooks Crozier

## **Exhibit A**

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 18-23538-rdd

4  
5 - - - - -x

6  
7 In the Matter of:

8  
9 SEARS HOLDINGS CORPORATION,

10  
11 Debtors.

12  
13 - - - - -x

14 Vir VENTURES, ET AL.,

15  
16 Plaintiffs,

17 VS.

Adv. No. 19-08700-RDD

18 SEARS HOLDINGS CORPORATION,

19 Defendant.

20  
21 - - - - -x

22 United States Bankruptcy Court

23 300 Quarropas Street, Room 248

24 White Plains, New York

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February 24, 2020

10:16 AM

B E F O R E:

HON. ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

1 Notice of Agenda of Matters Scheduled for Hearing on  
2 February 24, 2020 at 10:00 a.m.

3  
4 HEARING RE: Adversary proceeding: 19-08700-rdd, Vir  
5 Ventures, Inc., et al v Sears Holdings Corporation, Pre-  
6 trial Conference.

7  
8 HEARING RE: Adversary proceeding: 19-08700-rdd, Vir  
9 Ventures, Inc., et al v Sears Holdings Corporation, Motion  
10 to Adjourn Adversary Proceeding or for an Extension of Time  
11 to Answer or Otherwise Respond to Plaintiffs' Adversary  
12 Complaint (related Document(s) 5).

13  
14 HEARING RE: Administrative Claims Consent Program.

15  
16 HEARING RE: Motion to Allow Relief from Amended Stipulated  
17 Protective Order filed by Sonia E. Colon on behalf of Santa  
18 Rosa Mall, LLC (ECF 7210).

19  
20 HEARING RE: Motion to Approve/Second Motion for Orders  
21 Establishing Streamlined Procedures Governing Adversary  
22 Proceedings Brought by the Debtors Pursuant to Sections 502,  
23 547, 548 and 550 of the Bankruptcy Code (ECF 7204).

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1 HEARING RE: Motion to Authorize/Motion of Debtors Requesting  
2 Release of Adequate Assurance Deposit Amounts Pursuant to  
3 the Adequate Assurance Procedures (ECF 7290) .  
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24 Transcribed by: Pamela Skaw, Nicole Yawn and  
25 Jamie Gallagher



1 A P P E A R A N C E S :

2 WEIL GOTSHAL & MANGES LLP

3 Attorneys for Sears Holdings Corp.

4 and Affiliated Debtors

5 767 Fifth Avenue

6 New York, NY 10153

7

8 BY: GARRETT FAIL, ESQ.

9 JACQUELINE MARCUS, ESQ.

10 ANGELINE HWANG, ESQ.

11 JENNIFER BROOKS COZIER, ESQ.

12

13 FOLEY & LARDNER LLP

14 Attorney for Priority Claimant

15 90 Park Avenue

16 New York, NY 10016

17

18 BY: PAUL LABOV, ESQ.

19

20 AKIN GUMP STRAUSS HAUER & FELD LLP

21 Attorney for UCC

22 One Bryant Park

23 New York, NY 10036

24

25 BY: SARA L. BRAUNER, ESQ.

FERRAIUOLI LLC

Attorney for Gustavo Chico, Santa Rosa Mall, LLC  
And Carlos Rios Gautier  
Bank of America Building  
390 North Orange Avenue  
Suite 2300  
Orlando, FL 32801

ALSO PRESENT:

SELEN MAZER PAYMER (ph)

NEVILLE N. REED, ESQ. (TELEPHONIC)

LUCAS SCHNEIDER, ESQ. (TELEPHONIC)

SHARON C. BRITTON, ESQ. (TELEPHONIC)

LIGEE GU, ESQ. (TELEPHONIC)

DALE MENENDEZ, ESQ. (TELEPHONIC)

CARLOS RIOS GAUTIER, ESQ. (TELEPHONIC)

1 P R O C E E D I N G S

2 THE CLERK: All rise.

3 THE COURT: Please be seated. Okay. Good morning.

4 In re Sears Holdings Corporation, et al.

5 MS. CROZIER: Good morning, Your Honor.

6 The first item on the agenda is the initial pre-  
7 trial conference in Vir Ventures, et al. against Sears  
8 Holdings Corporation, number 19-08700.

9 THE COURT: Okay.

10 MS. CROZIER: Jennifer --

11 THE COURT: And related to that is Sears Holdings  
12 Corporation's motion to adjourn or alternative for an  
13 extension of time to answer.

14 So why don't we take both of those matters  
15 together?

16 MS. CROZIER: Thank you, Your Honor.

17 Jennifer Crozier, Weil Gotshal & Manges for the  
18 Debtors.

19 Your Honor, the Debtors move to adjourn or stay  
20 this adversary proceeding or, in the alternative, for an  
21 extension of time to respond to Plaintiffs' complaint.

22 The Plaintiffs are litigating their administrative  
23 expense claims in three separate contexts forcing the  
24 Debtors to contend against those claims on three separate  
25 fronts and expend the limited resources of the estate in so

1 doing to the detriment of the estate's other creditors.

2 The Plaintiffs, on November 12, 2019, filed their  
3 adversary complaint asserting several claims based, in  
4 pertinent part, on allegations that the Debtors breached  
5 certain Sears' market place agreement.

6 The complaint seeks \$790,000 approximately with  
7 respect to pre-petition amounts and \$95,000 approximately  
8 with respect to post-petition amounts.

9 Now, before they filed their adversary complaint,  
10 Plaintiffs filed six proofs of claim. In August 2019, the  
11 Debtors objected to these claims seeking to reclassify those  
12 general unsecured claims.

13 THE COURT: Because they were filed as 503(b)(9)?

14 MS. CROZIER: Correct.

15 THE COURT: Claims.

16 MS. CROZIER: The Plaintiffs responded and those  
17 claims are now the subject of a pending contested matter.

18 And then six days after they filed their adversary  
19 complaint, Plaintiffs affirmatively opted in to the  
20 administrative expense claims consent program by submitting  
21 two opt-in ballots; the first on behalf of Plaintiff AMI for  
22 approximately \$700,000. That covered both pre and post-  
23 petition amounts. And the second Plaintiff, Vir Ventures,  
24 for approximately \$185,000; again covering both pre and  
25 post-petition amounts.

1           So, Your Honor, the Debtors ask this Court to  
2           adjourn this proceeding until Plaintiffs' administrative  
3           expense claims have been resolved in connection with the  
4           pending contested matter and the administrative expense  
5           claims consent program. These are the contexts approved by  
6           this Court in the confirmation order and the omnibus  
7           objection procedures for the orderly and efficient  
8           resolution of claimants' administrative expense claims.

9           This adversary proceeding is decidedly not the  
10          proper context in which to litigate Plaintiffs'  
11          administrative expense claims.

12          First, the pre-petition amounts the Plaintiffs are  
13          seeking amount to a claim for money damages based on pre-  
14          petition conduct which is not properly brought as an  
15          adversary proceeding under the law and that's In Re Ephedra  
16          Products Liability Litigation, Southern District of New  
17          York, 2005.

18          Second, Your Honor, the Debtors' position is that  
19          Plaintiffs waived their right to recover on their  
20          administrative expense claims in the adversary context when  
21          they opted-in, affirmatively opted-in, to the administrative  
22          expense claims consent program. But, at the very least,  
23          their participation in that program moots their claim for  
24          relief as to post-petition amounts in connection with this  
25          adversary proceeding.

1 At bottom, Your Honor, Plaintiffs' adversary  
2 proceeding amounts to an end run around the orderly and  
3 efficient procedures that this Court approved to ensure that  
4 all creditors of the estate are treated fairly and  
5 equitably.

6 Now Plaintiffs make a few arguments in their  
7 opposition to the Debtors' motion to adjourn that I would  
8 like to briefly address.

9 First, Plaintiffs claim that this adversary  
10 proceeding is not simply a claim for money damages based on  
11 pre-petition conduct. Plaintiffs argue we've asserted  
12 claims for equitable relief as well.

13 First of all, for reasons that the Debtors would  
14 make clear in a motion to dismiss should it come to that,  
15 Your Honor, Plaintiffs have not and cannot state a claim for  
16 equitable relief here.

17 But even if that were not the case, this Court held  
18 in In Re Johns Manville 1985 that if the claim -- if the  
19 equitable claim is one that can be reduced to a money  
20 judgment, that is -- is effectively a claim for money  
21 damages masquerading as equitable relief, it must be  
22 asserted in connection with the orderly claims process.

23 THE COURT: But that's a -- that's true as a  
24 general proposition but there are two claims in this  
25 complaint that, to me, do seek relief that would be proper

1 as an adversary proceeding.

2 First, the declaration or recognition of an express  
3 trust and, second, the imposition of a constructive trust.  
4 That's not something you would normally litigate, I believe,  
5 in a claim objection.

6 It's affirmative relief that's being sought  
7 separate and apart from a claim. It's basically saying this  
8 isn't property of the estate.

9 MS. CROZIER: Right. So a couple of things on  
10 that, Your Honor.

11 The Debtors are prepared to litigate those claims  
12 for equitable relief in connection with a motion to dismiss  
13 if need be. But we would submit that addressing Plaintiffs'  
14 administrative expense claims -- Plaintiff submitted -- each  
15 Plaintiff submitted one ballot and that ballot covers both  
16 pre and post-petition. Now those ballots include the  
17 amounts Plaintiffs are seeking as equitable relief.

18 And so we would submit that because these are  
19 orderly and -- an orderly and efficient manner of addressing  
20 Plaintiffs' claims that we should adjourn this adversary  
21 proceeding until those claims are resolved and then  
22 determine whether it's appropriate to move forward on those  
23 claims. That's the first argument.

24 The second argument is, again an argument that we  
25 would anticipate making in a motion to dismiss, Plaintiffs'

1 haven't and can't state a claim for breach of express trust.  
2 It's not enough to simply say in -- under the law, it's not  
3 enough to simply say in a contract --

4 THE COURT: But that may be the case.

5 MS. CROZIER: Okay.

6 THE COURT: But why wouldn't the right thing to do  
7 here be to consolidate those two claims under Rule 7042 with  
8 the pending claim objection so it's all dealt with at once  
9 and then set a deadline to answer or otherwise move on just  
10 those two?

11 I mean, the -- I agree with you on the other  
12 claims. They're -- it's just another way of saying we have  
13 a claim as opposed to a separate claim for relief to  
14 establish a trust either actual or constructive.

15 MS. CROZIER: So, just so I understand what Your  
16 Honor is proposing, you would propose to consolidate the  
17 claims for equitable relief with the pending contested  
18 matter?

19 THE COURT: The two -- well, I'm not sure -- I want  
20 to be specific. The claim for express trust and the claim  
21 for a constructive trust.

22 The other claims, the other causes of action, to  
23 me, are already being dealt with in the claims objection  
24 process and properly so. They're not -- they are not the  
25 proper subject of the Rule 7001 adversary proceeding.



1 MS. CROZIER: So I would defer to my colleague in  
2 bankruptcy concerning how to consolidating these claims with  
3 the pending contested matter.

4 THE COURT: Okay.

5 MR. FAIL: Good morning, Your Honor.

6 Garrett Fail of Weil Gotshal & Manges, if I may  
7 address the Court on this issue.

8 THE COURT: Right.

9 MS. FAIL: So the objections that are filed with  
10 respect to the current claims of the administrative and the  
11 pre-petition portions are a part of omnibus objections.

12 The Debtors adjourned that omnibus objection. We  
13 filed the thirteenth omnibus objection to a hundred other  
14 claims with the same issues so that they could all be  
15 addressed. There was a reason that we've consistently, you  
16 know, efficiently moved these cases forward and I'll present  
17 more of an update on the claims later.

18 So I don't think it necessarily makes sense to  
19 combine them.

20 Also Your Honor will recall you set up claims  
21 objections procedures whereby legal issues would be  
22 determined first before factual issues.

23 So, while we agree, and I think Ms. Crozier  
24 suggested and our pleadings suggested, that this be handled  
25 in connection with the claims process and without an

1 adversary proceedings, the additional time delay and cost of  
2 an adversary. I think the objections can be dealt with  
3 separately. They're on track. They'll go forward. That  
4 issue will be resolved.

5 The remaining claims can be dismissed either, in  
6 our opinion, in a motion or in the adversary. It doesn't --  
7 we're just trying to do it efficiently.

8 But I don't think it makes sense to delay or  
9 combine this new equitable relief with the question of  
10 whether they're entitled to a claim.

11 They filed claims and they submitted ballots.  
12 They've asked for a claim. Now they're asking for equitable  
13 relief on top.

14 I think we should address the claim first and  
15 equitable relief afterwards and I think it's an admission  
16 essentially when they filed two claims, they submitted  
17 ballots. They have claims.

18 THE COURT: Well are you saying that they're barred  
19 from asserting a trust?

20 MR. FAIL: We've asked for additional time to  
21 respond. And so if we have -- if they continue to, you  
22 know, prosecute the adversary after -- they might win,  
23 right?

24 We -- the objection is pending. Your Honor hasn't  
25 decided whether or not they have an administrative claim.

1 If they have a claim, this adversary's moot. They  
2 get a hundred cents. They're not going to get additional  
3 monies. They're looking for the same amount.

4 THE COURT: Well it's the other way around, too,  
5 right? If they have a trust, it -- yeah, the claim  
6 objection is moot.

7 MR. FAIL: Sure. But one's already been pending  
8 and subject to -- so it's been responded to and, you know,  
9 it --

10 THE COURT: I just don't see why it's that big a  
11 deal to include a motion to dismiss or a motion for judgment  
12 on the pleadings on the two trust claims as part of your  
13 objection to the claim.

14 MR. FAIL: Well, we can add another objection, Your  
15 Honor. We'll just need a little bit more time to do it and  
16 we'll file a separate objection.

17 But the one that's currently pending was with  
18 respect to the same request for the same amounts but in a  
19 different form. So we didn't have that pending when we set  
20 an objection.

21 THE COURT: I understand that. And so it -- I  
22 think the need to extend the time to answer and to schedule  
23 it in coordination with or combine it.

24 UNIDENTIFIED SPEAKER: Your Honor, if I may. I am  
25 here. I'm counsel for --

1 THE COURT: Okay. I want to get the Debtors' view  
2 first under Rule 7042, it makes sense. And I appreciate  
3 that there are a lot of common issues, common to a lot of  
4 claimants, generally.

5 But, just in terms of efficiently dealing with  
6 these particular claims --

7 MR. FAIL: We wouldn't want to delay, Your Honor,  
8 everybody else. I think Your Honor --

9 THE COURT: No.

10 MR. FAIL: -- has asked us to move forward.

11 THE COURT: I agree with you.

12 MR. FAIL: We'll move forward to dismiss these. We  
13 think that they're frivolous at best.

14 THE COURT: Okay. All right. Anything else?

15 MS. CROZIER: So there were just a couple of other  
16 things that I'd like to address, Your Honor.

17 With respect to the opposition to our motion to  
18 adjourn, Plaintiffs' counsel indicated that there's no cause  
19 for delay here because heretofore the settlement process has  
20 been minimal.

21 Counsel for the Debtors have engaged in several  
22 conversations and substantial correspondence with Plaintiffs  
23 in an effort to reach an amicable and expeditious resolution  
24 of their claims and to avoid depleting the pool of resources  
25 available to the estate's other creditors to no avail

1 because here we are. For example, Your Honor, Plaintiffs,  
2 on Friday, served us with an improper 30(b)(6) notice of  
3 deposition delineating no fewer than 24 topics; improper, of  
4 course, because the parties haven't met and conferred yet  
5 pursuant to Rule 26(f).

6 Second, Plaintiffs filed, last night at 12:27 a.m.  
7 I think, a motion to set aside \$885,000, a reserve from the  
8 second distribution, claiming that the Debtors' negotiations  
9 thus far have been "our way or the highway" and if what  
10 Plaintiffs' counsel means by that is that Debtors have  
11 expressed an unwillingness to pay Plaintiffs any more than  
12 they are owed under the law and any more than the orderly  
13 procedures established by this Court or approved by this  
14 Court for the settlement of their claims, then I suppose, in  
15 that case, Plaintiff is correct.

16 But we do submit, Your Honor, that at least with  
17 respect to the claims that are without question not properly  
18 brought in connection with an adversary proceeding  
19 (indiscernible) adjourn this and give the Debtors  
20 substantially more time to respond.

21 THE COURT: Okay. I'm confused though. I -- my  
22 order confirming the plan contemplated a report and I  
23 believe a motion or an opportunity to object at least if  
24 there was going to be any distribution, right?

25 MR. FAIL: No, Your Honor, I don't believe that

1 there was. I think last time, you may remember, pleadings  
2 were filed because we announced that we were making a  
3 distribution and then the rest ensued.

4 But I don't believe that there is a -- we don't  
5 need to make another motion. I think that there are minimum  
6 conditions that need to be satisfied.

7 THE COURT: Right. I don't think that's right. I  
8 think there's some notice requirement.

9 MR. FAIL: Sure. Notice. But not a -- no hearing.

10 THE COURT: No, a notice requirement.

11 MR. FAIL: Yeah.

12 THE COURT: And people can object.

13 MR. FAIL: Yeah. We'll file a notices in advance.

14 THE COURT: So is this -- was this pleading filed  
15 last night in response to a notice?

16 MR. FAIL: Not at all, Your Honor.

17 THE COURT: So why are we wasting time on this?  
18 It's a total waste of time. Disregard that pleading. It  
19 should be withdrawn. Okay.

20 MS. CROZIER: That's all I have, Your Honor. Thank  
21 you.

22 THE COURT: All right.

23 MS. PAYMER: May I, Your Honor?

24 THE COURT: Yes.

25 MS. PAYMER: Your Honor, my name is

1 Selen Mazer Paymer (ph). I'm here on behalf of Vir Ventures  
2 and AMI Ventures.

3 Your Honor, we did, in fact, file a motion last  
4 night.

5 Our concern is, Your Honor, that we're not being  
6 given the opportunity to be heard and to have this Court  
7 determine the merits of our claims objection, our response  
8 to the second omnibus claims objection as well as our  
9 adversary proceeding, Your Honor. I --

10 THE COURT: But motion is to set aside money?

11 MS. PAYMER: It is, Your Honor. We're  
12 concerned --

13 THE COURT: Well -- but what's the -- why? What  
14 the context?

15 MS. PAYMER: We're concerned, Your Honor. We feel  
16 as though that the Debtors have not complied with the  
17 procedures set forth in the confirmation order with respect  
18 to the administrative claims program --

19 THE COURT: Are they making distributions?

20 MS. PAYMER: Your Honor, they did make an initial  
21 distribution. And --

22 THE COURT: After a notice was given, right?

23 MS. PAYMER: After a notice was given, Your Honor.

24 THE COURT: And the order requires notice to be  
25 given with respect to future distributions.

1 MS. PAYMER: That's correct, Your Honor.

2 THE COURT: And then someone can respond and say,  
3 no, this is premature, right?

4 So why are we creating additional litigation before  
5 that process happens?

6 MS. PAYMER: Your Honor, my concern in conjunction  
7 with their motion to continue the adversary proceeding is  
8 that they're -- the Debtors are trying to run out the clock  
9 on my clients' claims and we're now missing the first  
10 distribution and the second distribution, Your Honor.

11 With respect to the first one, I know the  
12 confirmation order says that there should be an expedited  
13 reconciliation process.

14 And my clients are frustrated here because we've  
15 been trying to resolve this matter on an amicable basis for  
16 months, many months, Your Honor.

17 And we believe that, particularly with respect to  
18 the adversary proceeding, Your Honor, that it's not just an  
19 administrative claims issue. There are also taxes that were  
20 not paid.

21 There may be other individuals involved that we can  
22 name in this litigation that --

23 THE COURT: Wait, wait. Let's just stop.

24 MS. PAYMER: -- would be responsible.

25 THE COURT: Let's stop for a moment. Let's go



1 through this complaint and talk about the Bankruptcy Rules  
2 and the Bankruptcy Code and what can and cannot be brought;  
3 all right?

4 MS. PAYMER: Yes, Your Honor.

5 THE COURT: As I understand it, you have a pre-  
6 petition claim that's been objected to. That pre-petition  
7 claim asserts an administrative expense right under Section  
8 503(b)(9), correct?

9 MS. PAYMER: Correct, Your Honor.

10 THE COURT: And that's the subject of an -- a long  
11 pending objection.

12 MS. PAYMER: Correct, Your Honor.

13 THE COURT: You also have an administrative  
14 expense.

15 MS. PAYMER: Yes, Your Honor.

16 THE COURT: You assert those same claims in this  
17 adversary proceeding. In fact, you incorporate your  
18 pleadings into the adversary proceeding.

19 MS. PAYMER: Yes, Your Honor.

20 THE COURT: Where on Earth is that based on Rule  
21 7001 as opposed to the claims process?

22 Are we supposed to decide these things three times?

23 MS. PAYMER: No, Your Honor. We're just asking for  
24 one --

25 THE COURT: All right.

1 MS. PAYMER: -- (indiscernible) objection.

2 THE COURT: So that is -- that should just be  
3 dismissed. It's not proper in this context as an adversary  
4 proceeding. It's bankruptcy 101. It is not proper to keep  
5 litigating separate -- the same matter in separate  
6 pleadings. It's a waste of time and money.

7 Congress got it right in the Bankruptcy Rules.  
8 It's not covered in Rule 7001. That is not a proceeding to  
9 recover money. It's a claim against the Debtor. It's  
10 already be asserted.

11 Then you say there may be third parties involved  
12 through alter ego or piercing. And is that somehow a claim?  
13 Are you asserting that in this adversary proceeding? You're  
14 not, right?

15 MS. PAYMER: Not against the Debtors' estate, Your  
16 Honor. Against other individuals.

17 THE COURT: You're not asserting it in the  
18 adversary proceeding, right, because the -- those  
19 individuals are not named in the complaint.

20 MS. PAYMER: Not yet, Your Honor. We haven't  
21 engaged in discovery for us to figure out who that would  
22 actually be.

23 THE COURT: So that's not part of this adversary  
24 proceeding either. So you shouldn't be arguing that to me  
25 today either.

1 In fact, that argues to delay this.

2 There is also a serious issue as to your clients'  
3 standing and/or whether it's barred by prior orders of the  
4 Court.

5 So I would hope you would think very carefully  
6 before pursuing that.

7 Among other things, a general alter ego or veil  
8 piercing argument, it is well established in the Second  
9 Circuit is a violation of a stay if it's brought just willy  
10 nilly without stay relief.

11 MS. PAYMER: Uh-huh.

12 THE COURT: But it's not part of this complaint  
13 anyway.

14 So the only thing, to me, that looks like something  
15 new that might be covered by Bankruptcy Rule 7001 as an  
16 adversary proceeding are the two trust claims.

17 Is there anything else?

18 MS. PAYMER: No, Your Honor. That's correct.

19 THE COURT: So that's asserting an interest  
20 improperly as opposed to a claim generally against the  
21 Debtor.

22 MS. PAYMER: Correct, Your Honor.

23 THE COURT: All right. So if one were to actually  
24 deal with this complaint, one would have to sift through it  
25 and exclude all of this.

1 And why should a debtor be forced to spend the  
2 money to move to dismiss a complaint that, on its face, just  
3 doesn't make any sense procedurally?

4 You're throwing out a procedural gauntlet that  
5 doesn't make any sense except for these two claims.

6 MS. PAYMER: Your Honor, I think -- I can confer  
7 with Debtors' counsel with respect to the claims that we  
8 should -- are outstanding and should remain. I think we can  
9 resolve a motion to dismiss.

10 THE COURT: Okay.

11 MS. PAYMER: I'm just concerned my client is here  
12 today. We just want to know when we can actually have this  
13 Court determine any of these issues, the legal issues or the  
14 factual issues.

15 THE COURT: All right. That's a fair point. But I  
16 think we're going to get to that later in today's calendar  
17 which is the schedule for dealing with administrative  
18 expenses.

19 MS. PAYMER: Thank you, Your Honor.

20 THE COURT: Okay. So it seems to me, subject to  
21 hearing the general report on administrative expenses, that  
22 causes of action one, three, which is unjust enrichment,  
23 implied contract; one being breach of contract -- well,  
24 conversion depends on counts two and four. But to the  
25 extent it depends on some other count besides two and four,

1 it should be dismissed. Those should be dismissed.

2 Two and four which are the trust claims dismissed  
3 without prejudice to the claims process. It's already been  
4 underway and underway for months.

5 Two and four should be consolidated with the claims  
6 process under Bankruptcy Rule 7042 which is specifically  
7 contemplated by the advisory committee commentary to the  
8 2007 Amendments to Rule 3007 which deal with what should be  
9 dealt within a claim objection and what should be dealt  
10 within an adversary proceeding.

11 The rules committee and then through that -- then  
12 Congress recognized that there are times when a claim  
13 objection may also implicate matters that are dealt within  
14 an -- properly and necessarily in an adversary proceeding  
15 which would include the cause of action for the imposition  
16 of a trust.

17 And the rules committee said if a claim objection  
18 is filed separately from a related adversary proceeding, the  
19 court may consolidate the objection with the adversary  
20 proceeding under Rule 7042 and that's what should happen  
21 here.

22 Now as far as what goes first, I -- we should talk  
23 about that as part of the pre-trial. But given how the  
24 complaint is -- has been whittled down today, there  
25 definitely should be an extension of the time to answer or

1 otherwise move.

2 But we should now deal with, you know, when that  
3 should be. So why don't we address that in the context of a  
4 pre-trial conference which I gather pertains not only to  
5 this litigation but the timing of resolving common issues in  
6 a lot of different claim objections.

7 I want to know which counsel for the Debtor wants  
8 to address that?

9 MR. FAIL: Your Honor, Garrett Fail from Weil  
10 Gotshal.

11 It doesn't make sense to give the overall report  
12 right now and see where things are?

13 THE COURT: Okay.

14 MR. FAIL: I think it'll be brief.

15 MS. CROZIER: Thank you, Your Honor.

16 THE COURT: Okay.

17 (Pause)

18 MR. FAIL: Good morning, again, Your Honor.

19 Garrett Fail of Weil Gotshal & Manges, for the  
20 Debtors.

21 Your Honor, following entry of the confirmation  
22 order on October 15th, the Debtors sent notices to  
23 approximately 11,274 parties at 16,614 addresses.

24 Claimants were divided into three categories, as  
25 you'll remember. Opt-in, settled admin claims were those

1 who opted-in to the settlement and settled in time to be  
2 eligible for an initial distribution of \$21 million.

3 Non-opt-out settled admin claims would be those  
4 people who did not opt-in but also did not opt-out plus  
5 parties that did opt-in but whose claims were not reconciled  
6 in time for the initial distribution.

7 The third category were those who opted-out and who  
8 could be addressed and reconciled and paid after the  
9 effective date of the Plan.

10 So addressing the opt-in settled admin claim  
11 category first, Your Honor.

12 The Debtors received 1206 ballots. After  
13 reviewing, they identified and deducted approximately 258  
14 duplicate claims and 120 claims or ballots that would be  
15 addressed and should be addressed in separate processes  
16 including professionals that would be paid out of a carve-  
17 out. Utilities for whom there are separate deposit accounts  
18 to be paid for and taxing authorities.

19 That left 828 ballots to review. The Debtors  
20 reconciled and agreed with 359 of them or 43 percent of them  
21 for a total of \$73.2 million that shared in the \$21 million  
22 and they got 28.7 percent in the first distribution.

23 Ninety-eight percent of the payments to those  
24 people cleared. So it was successful. There are roughly 13  
25 checks out of 308 outstanding that haven't cashed.

1 Moving on to the second category and the work  
2 that's been done subsequent --

3 THE COURT: Can I interrupt you?

4 MR. FAIL: Of course, Your Honor.

5 THE COURT: AMI and Vir were in the opt-in category  
6 but they were not reconciled?

7 MR. FAIL: Correct, Your Honor.

8 THE COURT: Okay.

9 MR. FAIL: So they rolled over and rather than  
10 being capped at 75 percent, their cap goes up and they get  
11 to recover up to 80 percent along with the other parties in  
12 the second and subsequent distributions.

13 THE COURT: Right.

14 MR. FAIL: So, in the second category, where we  
15 currently are, this includes as -- this included the opt-in  
16 ballots that have not been reconciled plus additional  
17 motions and proofs of claim that asserted 503(b)(9) claims  
18 plus motions that are filed on the docket and proofs of  
19 claims that were filed asserting 503(b)(1) claims.

20 The Debtors filed -- and plus it also included the  
21 Debtors' books and records for unpaid, post-petition  
22 503(b)(1). That's the population that we were tasked to  
23 deal with.

24 THE COURT: Unless someone opted-out.

25 MR. FAIL: Correct, Your Honor.



1 THE COURT: Right. Okay.

2 MR. FAIL: The Debtors filed ten omnibus objections  
3 to more than 1400 claims. I think roughly 1407, that had  
4 asserted approximately \$702 million in administrative and  
5 priority claims.

6 Of these, all but approximately 48, which is 48  
7 claims for fewer than 30 creditors, have been resolved. So  
8 we resolved over 96 percent of the claims to which we  
9 objected without a contested hearing which I think is  
10 impressive.

11 In terms of the dollars, we resolved, without a  
12 contested hearing, more than 80 -- 98 percent in amount  
13 subject to the first through tenth objections and we're  
14 working with some of the --

15 THE COURT: I'm sorry. Subject to that what?

16 MR. FAIL: First through tenth omnibus objections.

17 THE COURT: Right. Pursuant to --

18 MR. FAIL: Those are the ones that --

19 THE COURT: -- those.

20 MR. FAIL: Pursuant to those --

21 THE COURT: Right.

22 MR. FAIL: -- that the Court either settled,  
23 entered orders, we settled or we withdrew. But we have  
24 reconciled without a --

25 THE COURT: As part of that process.

1 MR. FAIL: As part of that process.

2 THE COURT: Okay.

3 MR. FAIL: And through the administrative consent  
4 process that ensued subsequently.

5 THE COURT: Okay.

6 MR. FAIL: My point, Your Honor, was only that we  
7 didn't burden the Court extensively with contested matters.

8 And we're working with some of the additional  
9 remaining 48 claims on a consensual basis waiting for, for  
10 example, determination as to whether certain contracts will  
11 be assumed or assigned to Transform.

12 So there's reasons that some -- consensual reasons,  
13 why many of the objections have been carried, rather than to  
14 withdraw and refile.

15 THE COURT: Okay.

16 MR. FAIL: Currently, outstanding, there are  
17 approximately 1,936 in number, approximately \$332 million in  
18 asserted amounts outstanding. Still significant. But, of  
19 these, Your Honor, the debtors have reconciled and can agree  
20 to approximately 992 of them, more than 51 percent, leaving  
21 944 disputed. The debtors filed the eleventh, twelfth, and  
22 thirteenth objections to approximately 278 creditors and/or  
23 ballots. That's approximately 30 percent of the 944.

24 The objection deadlines for these will lapse on  
25 March 3rd and March 10, respectively, so coming up in

1 advance of the next hearing, Your Honor.

2 THE COURT: Which is March 25th, I think.

3 MR. FAIL: I believe. If that's the Monday, I  
4 think we changed it to accommodate Your Honor's court  
5 calendar.

6 THE COURT: Okay.

7 MR. FAIL: I think it was the 27th, and now, it's  
8 the 25th.

9 THE COURT: Well, maybe it's the 23rd. That's the  
10 Monday. It's the 23rd.

11 MR. FAIL: I believe it's the 23rd now, Your  
12 Honor.

13 THE COURT: okay.

14 MR. FAIL: But upcoming and the objection deadline  
15 will occur before then, and we're -- we'll be, you know,  
16 consistent with our normal practice, submitting certificates  
17 of no objection to whittle down and avoid the burden on the  
18 Court and all the parties and interests.

19 So, Your Honor, that -- that leaves us with  
20 approximately 668 disputed. Still significant, but a lot  
21 smaller.

22 THE COURT: And I'm sorry. This is in -- just in  
23 Category 2 or in both categories?

24 MR. FAIL: Category 2, Your Honor.

25 THE COURT: Okay.

1 MR. FAIL: category 3 is not significant, in terms  
2 of number.

3 THE COURT: Okay.

4 MR. FAIL: But also, in terms of our mandate for  
5 what, you know, we were tasked to focus on. So this is what  
6 I'm reporting on, Your Honor.

7 Of the 668, approximately 159 of these are real  
8 estate-related. The reason I say that is because the  
9 debtors are working with Transform to ensure that amounts  
10 for which Transform is responsible are paid by Transform,  
11 including cure amounts, and reconciling additional asserted  
12 amounts for the various landlords. So some of them may have  
13 been paid. Some of them will be paid. That's -- that's 159  
14 of the 168.

15 So, setting those aside for the moment, there's  
16 507 others that are disputed that we're working towards  
17 resolving. The debtors have sent out more than 365  
18 individual emails to these parties. The debtors believe  
19 that, for the remaining -- that for 61 of the remaining  
20 creditors or ballots, they relate to contracts that may have  
21 been assumed or were assumed by Transformed and they,  
22 therefore, no longer have claims against the debtors. There  
23 may be nothing left to do with those, so that may be 61 that  
24 are resolved completed. The debtors are researching  
25 approximately 60 creditors to find ballot contact

1 information for those, leaving 23 that haven't been  
2 contacted with a formal email recently, and those will go  
3 out by the end of the week.

4 The emails that we sent out informed parties that,  
5 if they don't respond, the debtors will be pursuing  
6 objections to the claims, and the debtors will do so where  
7 there's no response or the response does not lead to  
8 information sufficient to reconcile. Obviously, there has  
9 been a lot of work that's gone into this process. The  
10 debtors have been efficient with their use of judicial and  
11 estate resources, and we hope to be able to continue that  
12 efficiency while continuing to make process -- progress,  
13 Your Honor.

14 The goal of the debtors is to reduce the number  
15 and the amount of disputed claims in advance of the next  
16 distribution, in order to reduce the need for reserves and  
17 to maximize the amount that's distributable, ultimately.  
18 While the debtors have reconciled amounts that they owe,  
19 they've also sent demand letters and commenced hundreds of  
20 preference actions. There is likely overlap, and the  
21 debtors reserve all rights to pursue affirmative recoveries.

22 The debtors are still collecting information from  
23 Transform and from creditors, but, given the Court's  
24 direction to expedite claims reconciliation, in large part,  
25 the debtors have not held up reconciling amounts owed, in

1 order to get preferences -- preference recoveries net. To  
2 further streamline the process and expedite and maximize  
3 recoveries, the debtors will continue -- will consider the  
4 concept of a convenience, to make lump-sum, one-time final  
5 payments, rather than multiple de minimus payments, for  
6 small claims that have been allowed, to reduce  
7 administrative costs.

8 Your Honor, that -- that brings us up to date and  
9 to where we are. The next hearing is, as you said, at the  
10 end of March. We expect to go forward with a number of  
11 objections, if -- if we have to. We -- we found that the  
12 adjournments have led, as the numbers indicate -- they speak  
13 for themselves. The adjournments have worked. The debtors  
14 have worked consensually, and we've avoided the time and  
15 expense of contested matters. We're currently scheduled to  
16 go forward, and we will, if we have to, on any remaining  
17 items.

18 THE COURT: Well, I -- I was under the impression,  
19 though, that, in -- in saying that, the debtors believed  
20 that there might well be common issues that would need -- it  
21 would make sense to give the parties who have not settled an  
22 opportunity to be heard on, so that -- well, everyone  
23 believes they're the best lawyer. So, you know, the lawyer  
24 who isn't the best lawyer gets heard first and loses, and  
25 then they're stuck. So when do you contemplate that

1 happening, that type of process?

2 MR. FAIL: They are currently teed -- the two  
3 issues that were raised with common -- with common issues  
4 were the world imports issue. There are only two attorneys  
5 And maybe three -- two or three -- three attorneys with four  
6 claims, out of the many, many that were disputed, that seek  
7 to go forward at a hearing.

8 THE COURT: Okay.

9 MR. FAIL: Based on the first. There's another  
10 round of objections, and there's none -- we filed another  
11 objection. There have been no responses to date. So we'll  
12 see what's required, and we may ask the Court for  
13 flexibility. We may go forward, but that's currently teed  
14 up for March.

15 The second issue was what has been referred to  
16 this morning as the marketplace vendors or otherwise  
17 referred to as drop ship, and we filed, as I mentioned,  
18 another objection to 100 claims of a similar issue. It's  
19 teed up for March, if people want to go forward. We'll be  
20 prepared to do that, too.

21 THE COURT: All right.

22 MR. FAIL: Your Honor, I would just say that, with  
23 respect to disputed matters that go forward before judgment,  
24 the appellate process takes time, and we don't -- we, the  
25 debtors, don't believe that, you know, litigation is going

1 to yield a faster recovery to parties. So I'll say it on  
2 the record again.

3 THE COURT: That may well be the case.

4 MR. FAIL: But it -- we're prepared to go forward.

5 THE COURT: And it may be, based on -- and -- and  
6 that's confirmed by what you have been reporting to me just  
7 now, that the claimants, by and large, believe that, too. I  
8 just want to get a sense of the timing here, and it's either  
9 the next hearing or maybe the one after that, where those  
10 issues might be teed up.

11 MR. FAIL: That's right, Your Honor, because  
12 although we have attempted to get this all done, in advance  
13 of the next hearing, the -- between the objection deadline  
14 and the hearing, parties may want time to enter into  
15 settlement negotiations. So --

16 THE COURT: Right, and I'm not going to stand --  
17 I'm not going to stand in the way of that, because that's  
18 parties controlling their own -- their own destiny.

19 So, moving aside to Vir and AMI, it doesn't appear  
20 to me that their issues are really subsumed by those two  
21 joint issues. It's really a --

22 MR. FAIL: They're not, Your Honor.

23 THE COURT: -- a separate legal theory.

24 MR. FAIL: Other parties can assert it. Their  
25 contracts aren't unique, but no one else has, in part,



1 because I'm sure, as Ms. Crozier will tell you, they're  
2 barred. When you have a contract, you can't have quasi-  
3 contract relief, unless amongst other things, but --

4 THE COURT: Well, I -- but I -- but I -- what I'm  
5 saying is I also -- I don't know whether you have other  
6 parties like Vir and AMI that are really online suppliers  
7 with that type of contractual relationship.

8 MR. FAIL: Hundreds, yeah.

9 THE COURT: You do?

10 MR. FAIL: Yes.

11 THE COURT: But -- but others have not raised  
12 these issues?

13 MR. FAIL: I think there was -- there may be one  
14 or two in the -- in the second omnibus objection that  
15 responded asserting it, in response. I'd have to go back  
16 and look, but in general, there have been no adversary  
17 proceedings commenced to declare that it's not our -- that  
18 it's not property of the debtors' estate. So --

19 THE COURT: Okay. So --

20 MR. FAIL: Your Honor, this is a drop ship issue.  
21 They're -- all the drop ship parties have these -- have the  
22 same contract. They're referred to as marketplace vendors.

23 THE COURT: Right. But is that an issue for Vir  
24 and AMI? I guess it is.

25 MR. FAIL: That's what -- that's what the pending

1 objection is. So they're one of the --

2 THE COURT: All right.

3 MR. FAIL: -- parties.

4 THE COURT: So that is -- that is a common issue?

5 MR. FAIL: The drop ship is, yes.

6 THE COURT: Right. And one would get to that on a  
7 non-motion to dismiss basis earlier than -- if the motion to  
8 dismiss is denied on a -- on a summary judgment.

9 MR. FAIL: That's what's teed up for the omnibus  
10 objection, legal matter only.

11 THE COURT: Right.

12 MR. FAIL: You know, applying the facts that  
13 aren't disputed.

14 THE COURT: All right. So it seems to me that the  
15 -- the deadline to answer should be shorter enough, so that  
16 I could have a hearing on those 2 claims, on the 23rd, the  
17 same time as I could have a hearing on the drop ship issue.  
18 Although, if parties are in discussions -- most parties are  
19 in discussions, I would adjourn that, even if one party  
20 wanted to go ahead, because it just doesn't make sense to  
21 force all the other parties to drop meaningful settlement  
22 discussions, because one party doesn't want to.

23 MR. FAIL: Does that leave time for a motion to  
24 dismiss or whatever we'd be filing, with respect to that  
25 issue?

1 MS. CROZIER: It does.

2 MR. FAIL: Okay.

3 MS. CROZIER: So, with the hearing on March 23rd,  
4 would Your Honor propose a deadline to respond of March 9th?

5 THE COURT: To respond to the motion to dismiss?

6 MS. CROZIER: Correct.

7 THE COURT: Well, so when would you file the  
8 motion to dismiss?

9 No, I -- I think it could be seven. The response  
10 to the motion to dismiss could e seven days before the  
11 hearing.

12 MS. CROZIER: Okay.

13 THE COURT: So that would be the 16th.

14 MS. CROZIER: So the response would be the 16th?

15 THE COURT: Right.

16 MS. CROZIER: So the debtors would file the motion  
17 to dismiss --

18 THE COURT: On the 2nd?

19 MS. CROZIER: On the 2nd.

20 THE COURT: Okay, that makes sense

21 MS. CROZIER: And, to be clear, Your Honor, we  
22 would not be moving to dismiss, with respect to Counts 1 and  
23 3, which are the breach of contracts and unjust enrichment  
24 claims.

25 THE COURT: No, those are already -- those are

1 already at issue, and -- and, as far as the last contract --  
2 I'm sorry -- the last cause of action, that would only be  
3 -- oh, I'm sorry. Let's back up. The conversion cause of  
4 action, which is the next to last. Now, that's only  
5 premised upon the trust counts. Otherwise, it doesn't --  
6 it's not really a claim.

7 MR. FAIL: So it's not incremental. We can -- can  
8 we skip that, for the responses, in other words?

9 THE COURT: Yes. And then the last cause of  
10 action which I -- I ignored, which is Count 6, which is  
11 fraudulent or negligent misrepresentation -- again, that's  
12 subsumed within the claim issues. So the only thing that's  
13 live in the complaint are Counts 2 and 4, and, to the extent  
14 they give a predicate to the next-to-last-count conversion,  
15 but it's really 2 and 4.

16 MS. CROZIER: Understood. We can certainly do  
17 that, Your Honor.

18 THE COURT: Okay, all right. So motion to dismiss  
19 or answer on those counts by the 2nd. If it's a motion to  
20 dismiss, the time to respond is the 16th, and then, unless I  
21 adjourn it, the hearing would be on the -- at the same time  
22 as the hearing on the drop box issue on the 23rd.

23 MR. FAIL: Thank you, Your Honor.

24 THE COURT: Although, again, everyone should  
25 understand that, if, you know, a number of parties who had

1 reserved the right to argue the drop box issue on the 23rd  
2 have said, no, we're in discussions, we don't want to do  
3 that, I'm not going to shortchange those -- or short-circuit  
4 those discussions by having one party go ahead.

5 MR. FAIL: Understood, Your Honor.

6 THE COURT: On the 23rd.

7 MR. FAIL: Appreciate that.

8 Unless Your Honor has any other questions, that  
9 concludes the debtors' report on the claims process.

10 THE COURT: Okay, all right. I think that  
11 concludes the pretrial also.

12 MS. CROZIER: Thank you so much, Your Honor.

13 THE COURT: Okay.

14 MS. CROZIER: And I have another proceeding to  
15 attend, if I may?

16 THE COURT: That's fine.

17 MS. CROZIER: Thank you.

18 THE COURT: All right.

19 If you want to memorialize this in a pretrial  
20 order, you can. The record's pretty clear, so I'm not sure  
21 you need to.

22 MR. FAIL: I think -- I think we'll rely on the  
23 record, Your Honor.

24 THE COURT: Okay, okay.

25 MR. FAIL: One other things, on the claims

## **Exhibit B**

SRF 36417

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*Attorneys for Debtors  
and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

	-----X	
	:	
In re	:	Chapter 11
	:	
SEARS HOLDINGS CORPORATION, <i>et al.</i> ,	:	Case No. 18-23538 (RDD)
	:	
Debtors. <sup>1</sup>	:	(Jointly Administered)
	:	
	-----X	

**NOTICE OF  
(I) BALLOT TO OPT-IN TO ADMINISTRATIVE EXPENSE CLAIMS CONSENT PROGRAM AND  
(II) BALLOT TO OPT-OUT OF ADMINISTRATIVE EXPENSE CLAIMS CONSENT PROGRAM**

PLEASE READ AND FOLLOW THE ENCLOSED INSTRUCTIONS CAREFULLY BEFORE  
COMPLETING THE (I) OPT-IN BALLOT ATTACHED HERETO AS EXHIBIT A OR  
(II) OPT-OUT BALLOT ATTACHED HERETO AS EXHIBIT B.

IF YOU DO NOT TAKE ANY ACTION, YOU WILL BE DEEMED TO BE BOUND BY THE  
ADMINISTRATIVE EXPENSE CLAIMS CONSENT PROGRAM, BUT NOT ENTITLED TO THE  
BENEFITS THAT WILL BE PROVIDED TO HOLDERS OF ADMINISTRATIVE EXPENSE CLAIMS  
WHO TIMELY OPT IN TO THE ADMINISTRATIVE EXPENSE CLAIMS CONSENT PROGRAM, AS  
DESCRIBED BELOW.

<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, are set forth in the *Order Directing Joint Administration of Related Chapter 11 Cases* (ECF No. 118). The location of the Debtors' service address is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

SRF 36417

**IN ORDER FOR YOUR OPT-IN BALLOT OR OPT-OUT BALLOT TO BE EFFECTIVE,  
THE APPLICABLE BALLOT MUST BE ACTUALLY RECEIVED BY  
NOVEMBER 18, 2019,<sup>2</sup> AT 4:00 P.M. (PREVAILING EASTERN TIME)  
(THE "OPT-IN/OPT-OUT DEADLINE").**

FAILURE TO OPT-IN TO THE ADMINISTRATIVE EXPENSE CLAIMS CONSENT PROGRAM BY COMPLETING AND TIMELY SUBMITTING AN OPT-IN BALLOT MEANS YOU WILL NOT BE ENTITLED PARTICIPATE IN TO THE INITIAL DISTRIBUTION (AS DEFINED HEREIN).

FAILURE TO OPT-OUT OF THE ADMINISTRATIVE EXPENSE CLAIMS CONSENT PROGRAM BY COMPLETING AND TIMELY SUBMITTING AN OPT-OUT BALLOT WILL BIND YOU TO THE TERMS OF THE ADMINISTRATIVE EXPENSE CLAIMS CONSENT PROGRAM.

On October 15, 2019, the Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**") entered an order confirming the *Modified Second Amended Joint Chapter 11 Plan of Sears Holdings Corporation and its Affiliated Debtors* [ECF No. 5293] (the "**Plan**"),<sup>3</sup> approving, among other things, a proposed consent program for holders of Administrative Expense Claims (the "**Administrative Expense Claims Consent Program**") by and among the above-captioned debtors and debtors in possession (collectively, the "**Debtors**"), the Creditors' Committee and the Ad Hoc Vendor Group<sup>4</sup> [ECF No. 5370] (the "**Confirmation Order**").<sup>5</sup>

You are receiving the opt-in ballot (the "**Opt-In Ballot**"), attached hereto as **Exhibit A**, and the opt-out ballot (the "**Opt-Out Ballot**" and together with the Opt-In Ballot, the "**Election Ballots**"), attached hereto as **Exhibit B**, because, as a holder of an Administrative Expense Claim,<sup>6</sup> you are entitled to opt-in to or opt-out of the Administrative Expense Claims Consent Program.

**If you do not take any action, you will be deemed to have opted in and will be bound by the Administrative Expense Claims Consent Program, but not entitled to any benefits that will be provided to holders of Administrative Expense Claims who affirmatively opt-in to the Administrative Expense Claims Consent Program prior to the Opt-In/Opt-Out Deadline, namely, participation in an initial distribution of \$21 million on or about December 1, 2019 to all holders of Administrative Expense Claims who opt-in to the Administrative Expense Claims Consent Program.**

All Holders of Administrative Expense Claims (other than the Ad Hoc Vendor Group that is deemed to have opted-in) have an option to opt-in to or opt-out of the Administrative Expense Claims Consent Program and releases contained therein. **The Creditors' Committee and the Debtors recommend that you affirmatively opt-in to and do not opt-out the Administrative Expense Claims Consent Program.**

---

<sup>2</sup> Thirty-three (33) days after service of this notice.

<sup>3</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Confirmation Order or the Plan.

<sup>4</sup> The "**Ad Hoc Vendor Group**" means collectively, Whitebox Asymmetric Partners, LP, Whitebox Multi-Strategy Partners, LP, Hain Capital Investors Master Fund, Ltd., and Cherokee Debt Acquisition, LLC.

<sup>5</sup> Copies of the Plan, Confirmation Order, and the Administrative Expense Claims Consent Program Term Sheet may be accessed free of charge by visiting the website maintained by the Debtors' agent, Prime Clerk, LLC (the "**Claims and Noticing Agent**") at <https://restructuring.primeclerk.com/sears>.

<sup>6</sup> Specifically, you are receiving the Election Ballots because either (i) the Debtors believe you may be a Holder of an Administrative Expense Claim as of August 6, 2019 or (ii) you filed a proof of Administrative Expense Claim, filed a motion seeking allowance of an Administrative Expense Claim, or have otherwise asserted an Administrative Expense Claim in these Chapter 11 Cases.



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**TREATMENT OF ADMINISTRATIVE EXPENSE CLAIMHOLDERS WHO AFFIRMATIVELY OPT-IN**

All holders of Allowed Administrative Expense Claims that affirmatively opt-in (the “**Opt-In Settled Admin Claims**”) to the Administrative Expense Claims Consent Program prior to the Opt-In/Opt-Out Deadline shall receive, among other things:<sup>7</sup>

- Their pro rata share of \$21 million (“**Initial Cash Pool**”), on or about December 1, 2019 (the percentage recovery, the “**Initial Recovery**”);
- total recovery capped at 75% of the Allowed Administrative Expense Claim;
- such \$21 million shall only be available to holders of Opt-In Settled Admin Claims who consensually agree with the Debtors to the Allowed amount of the Opt-In Settled Admin Claims;
- consensual reconciliation of the Allowed amount of Opt-In Settled Admin Claims (including on account of 503(b)(9) and 503(b)(1) issues regarding inducement, date of receipt, port of origin, etc., and any exposure on account of preference actions), to be completed within 30 days from the date of receipt of the Opt-In Ballot (the “**Expedited Reconciliation**”);
- to the extent the Debtors, the Creditors’ Committee, and the holder of the Opt-In Settled Admin Claim are unable to consensually resolve the Allowed amount, such resolution shall be subject to reconciliation on an agreed-upon schedule as reasonably agreed to by the Debtors, the Creditors’ Committee, and the applicable holder of an Opt-In Settled Admin Claim;
- for the avoidance of doubt, any waiver or settlement of any preference action shall be considered on a case-by-case basis; and
- holders who do not agree with the Debtors and the Creditors’ Committee on the Allowed amount of Opt-In Settled Admin Claims shall be deemed to hold a Non Opt-Out Settled Admin Claim.

**TREATMENT OF ADMINISTRATIVE EXPENSE CLAIMHOLDERS WHO NEITHER OPT-IN NOR OPT-OUT**

All Holders of an Allowed Administrative Expense Claim against the Debtors who neither (i) opt-in to the Administrative Expense Claims Consent Program nor (ii) opt-out of the Administrative Expense Claims Consent Program prior to the Opt-In/Opt-Out Deadline (the “**Non Opt-Out Settled Admin Claims**,” and together with the Opt-In Settled Admin Claims, the “**Settled Administrative Expense Claims**”) shall receive, among other things:

- its pro rata share of the Second Distribution, which will be shared only by other holders of Non Opt-Out Settled Admin Claims until they have received a percentage of distribution on their Non Opt-Out Settled Admin Claims that is equal to the Initial Recovery provided to holders of Opt-In Settled Claims;
- total recovery capped at 80% of the Allowed Administrative Expense Claim (together with the Initial Recovery, the “**Settled Admin Expense Claims Recovery**”);
- Expedited Reconciliation to be completed within 30 days from the Opt-In/Opt-Out Deadline;
- to the extent the Debtors, the Creditors’ Committee, and the holder of the Non Opt-Out Settled Admin Claim are unable to consensually resolve the Allowed amount, such resolution shall be subject to reconciliation on an agreed-upon schedule as reasonably agreed to by the Debtors, the Creditors’ Committee, and the applicable holder of a Non Opt-Out Settled Admin Claim; and
- any waiver or settlement of any preference action shall be considered on a case-by-case basis.

All holders of Administrative Expense Claims who do not opt out of the Administrative Expense Claims Consent Program will be deemed to be satisfied in full on account of such claim once they have received payment in cash equal to (i) 75% of the applicable Allowed Administrative Expense Claim on account of Opt-In Settled Admin

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<sup>7</sup> The following is an illustrative summary of the benefits of the Administrative Expense Claims Consent Program and is qualified in its entirety by reference to the applicable provisions in the Confirmation Order.

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Claims, and (ii) 80% of the applicable Allowed Administrative Expense Claim on account of Non Opt-Out Settled Admin Claims. Any Distributions made on account of Settled Administrative Expense Claims shall not be subject to disgorgement, including without limitation, upon any conversion or dismissal of the Chapter 11 Cases. And upon entry of the Confirmation Order, all Settled Administrative Expense Claims shall be Allowed against the Debtors in these Chapter 11 Cases on a consolidated basis, or upon any conversion or dismissal of the Chapter 11 Cases.

#### **TREATMENT OF ADMINISTRATIVE EXPENSE CLAIMHOLDERS WHO OPT-OUT**

If you **opt out of the Administrative Expense Claims Consent Program** prior to the Opt-In/Opt-Out Deadline, you will retain the right to receive payment of the Allowed 100% of your Administrative Expense Claim, but payment of your Administrative Expense Claim shall occur on the latest of (i) the Effective Date, (ii) the first Business Day after the date that is thirty (30) calendar days after the date such Administrative Expense Claim is Allowed, and (iii) the next Distribution Date after such Administrative Expense Claim is Allowed. Holders of opt-out Claims will not be entitled to participate in the Initial Distribution, Second Distribution, or any further distribution until the Plan has become effective or the Settled Administrative Expense Claims have been satisfied.

#### **ADDITIONAL INFORMATION**

Pursuant to the Administrative Expense Claims Consent Program, holders bound by the Administrative Expense Claims Consent Program shall be paid in the following order of priority: (1) Holders of Opt-In Settled Admin Claims of their pro rata share of the Initial Cash Pool; (2) Holders of Non Opt-Out Settled Admin Claims of their pro rata share up to a percentage recovery equal to the Initial Recovery; and (3) all Holders bound by the Administrative Expense Claims Consent Program of the remaining unpaid amount of their Allowed Administrative Expense Claims up to the Settled Admin Expense Claims Recovery.

Each Holder of a Settled Administrative Expense Claim also agrees (1) to support the Plan; and (2) that acceptance of and consent to the Administrative Expense Claims Consent Program will be deemed consent to the Plan, acceptance of the treatment under the Plan in satisfaction of section 1129(a)(9) of the Bankruptcy Code, and agreement to provides the releases included in the Administrative Expense Claims Consent Program.

#### **Treatment of Holders of Administrative Expense Claims Under Administrative Expense Claims Consent Program**

	<b>Opt-In Settled Admin Claims</b>	<b>Non Opt-Out Settled Admin Claims</b>	<b>Opt-Out Administrative Expense Claims</b>
<b>Maximum Recovery on Account of Allowed Administrative Expense Claim</b>	75% of Allowed Amount	80% of Allowed Amount	100% of Allowed Amount
<b>Participates in Distribution of \$21 million Initial Cash Pool on or about December 1, 2019</b>	Yes	No	No
<b>Participates in Second Distribution</b>	No <sup>8</sup>	Yes	No
<b>Distribution on the Later of (i) the Effective Date, (ii) 30 days after Allowance of the Claim, and (iii) the next Distribution Date after Allowance of the Claim</b>	N/A	N/A	Yes

<sup>8</sup> To the extent there are any amounts remaining for distribution after the Non Opt-out Settled Admin Claims have received the percentage recovery equal to the Initial Recovery, the Opt-In Settled Admin Claims shall share pro rata in such excess with the Non Opt-Out Settled Admin Claims.

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<b>Claims Reconciliation to occur</b>	Within 30 days of receipt of Opt-In Ballot	Within 30 days after Opt-In/Opt-Out Deadline	In ordinary course
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### **INSTRUCTION FOR OPTING-IN OR OPTING-OUT**

In order to **opt-in** to or **opt-out** of the Administrative Expense Claims Consent Program, you must complete, execute, and submit your Opt-In Ballot or Opt-Out Ballot to the Claims and Noticing Agent so that your Opt-In Ballot or Opt-Out Ballot is **actually received** by the Claims and Noticing Agent on or before the Opt-In/Opt-Out Deadline, which is **November 18, 2019, at 4:00 p.m., prevailing Eastern Time.**

**You are strongly encouraged to review the Administrative Expense Claims Consent Program Term Sheet and the Plan before you make an election. You may wish to seek legal advice concerning the Administrative Expense Claims Consent Program and the Election Ballots.**

**Acceptable Methods to Complete and Submit Your Election Ballots.** You may elect to opt-in to or opt-out of the Administrative Expense Claims Consent Program by completing and submitting (i) an electronic Opt-In Ballot or Opt-Out Ballot through the dedicated, online portal maintained by the Claims and Noticing Agent (“**E-Ballot**”) or (ii) one of the paper-copy Election Ballots (the “**Paper Election Ballots**”). In either case (E-Ballot or Paper Election Ballots), you must submit your Opt-In Ballot or Opt-Out Ballot to the Claims and Noticing Agent so that it is **actually received** by the Claims and Noticing Agent on or before the Opt-In/Opt-Out Deadlines.

### **CERTAIN RISK FACTORS TO BE CONSIDERED**

#### **1. Risks Related to Debtors’ Ability to Make Distributions**

##### **(a) Debtors’ Assets Available for Distributions**

As described in greater detail in the Griffith Declaration, Murphy Declaration, and Transier Declaration,<sup>9</sup> the Debtors’ Assets as of the September 18, 2019 include approximately \$173.5 million comprised of (i) approximately \$50.1 million in cash on hand, (ii) \$33.4 million on account of other Assets to be monetized, and (iii) approximately \$97 million owed by Transform for the assumptions of 503(b)(9) Claims<sup>10</sup> (the “**Additional Asset Proceeds**”):

<b>Sources</b>	
Cash on Hand at 9/18/19	\$ 50.1
Calder Net Proceeds	10.0
Real Estate Proceeds	13.1
De Minimis Assets	5.3
2017 EDA Funds	5.0
Transform 503(b)(9) Obligations	90.0
<b>Total Sources</b>	<b>\$ 173.5</b>

**In addition**, the Debtors believe they will receive significant recoveries from the proceeds of certain valuable litigation assets, including avoidance action arising under section 547 of the Bankruptcy Code or any comparable “preference” action arising under applicable non-bankruptcy law (collectively, the “**Preference Actions**”), certain

<sup>9</sup> Declaration of Brian J. Griffith in Support of Confirmation of Modified Second Amended Joint Chapter 11 Plan of Liquidation of Sears Holdings Corporation and its Affiliated Debtors (ECF No. 5148) (the “**Griffith Declaration**”), Declaration of William Murphy in Support of Confirmation of Modified Second Amended Joint Chapter 11 Plan of Liquidation of Sears Holdings Corporation and its Affiliated Debtors (ECF No. 5149) (the “**Murphy Declaration**”), Declaration of William L. Transier in Support of Confirmation of Modified Second Amended Joint Chapter 11 Plan of Liquidation of Sears Holdings Corporation and its Affiliated Debtors (ECF No. 5146) (the “**Transier Declaration**”).

<sup>10</sup> The Debtors believe that pursuant to section 2.3(k)(ix) of the Asset Purchase Agreement, Transform is obligated to assume approximately \$97 million on account of 503(b)(9) Claims. The \$90 million reflected herein ties to the \$90 million of estimated 503(b)(9) Claims; to the extent the 503(b)(9) Claims are in excess of \$90 million, Transform shall be liable to assume up to \$97 million on account of 503(b)(9) Claims pursuant to the Asset Purchase Agreement. Transform disputes that it owes such amounts to the Debtors.

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prepetition related party transaction claims against ESL Investments, Inc. and its affiliates (“ESL”) and other parties, and potential settlements with insurers with respect to claims against the D&O Policy (together the “**Litigation Proceeds**”), although there can be no assurance of any recovery:

- **Preference Actions.** The Debtors estimate that they will receive at least approximately \$100 million in recoveries from Preference Actions out of an excess of \$1.345 billion of gross total transfers in the preference window, which is consistent with comparable transactions where the average range of recoveries is from 11.4% if the gross total transfers pursued or, alternatively 23.7% of those transfers, net of subsequent new value. *See* Griffith Decl., ¶¶ 64-70.
- **ESL Litigation.** The Debtors’ Restructuring Subcommittee and the Creditors’ Committee both have investigated the prepetition related party transaction claims and concluded that such claims are meritorious. On April 17, 2019 the Restructuring Subcommittee, on behalf of certain of the Debtors, filed an adversary complaint against ESL Investments, Inc., its affiliates, various third parties, and certain of the Debtors’ directors and officers (ECF No. 3278) (the “**Subcommittee Adversary Complaint**”), seeking over \$2 billion in damages arising from certain prepetition related party transactions. *See* Transier Decl., ¶¶ 20-27. As of the date hereof, the Court has not heard any arguments or considered any evidence in connection with the Subcommittee Adversary Complaint. Current and prospective defendants dispute the validity of Claims asserted in the Subcommittee Adversary Complaint, and there is no assurance of any recovery.
- **D&O Insurance.** The Debtors believe they may be able to receive significant recoveries against available D&O Policies on account of Preserved Causes of Action against the Specified Directors and Officers. The Debtors believe that there is at least approximately \$150 million of available directors and officers liability insurance that provides a source of recovery to the Debtor plaintiffs in the Subcommittee Adversary Complaint against parties (in their capacity as directors and/or officers) who are covered by such insurance. Certain defendants (such as ESL, Lampert and the Seritage parties) in the Subcommittee Adversary Complaint may also be liable for sums separate and apart from any available insurance coverage. *See* Transier Decl., ¶ 28. Certain insurers have disclaimed coverage under certain of the D&O Policies.

There can be no assurance that the Debtors will be able to successfully monetize their Assets in the projected amounts or when such Assets will be monetized. There is a risk that the Net Proceeds of Total Assets, including the Litigation Proceeds, may be significantly less than projected, which, in turn, could cause the amount and timing of Distributions to adversely change substantially. Further, unanticipated events and circumstances may affect the ultimate recoveries.

**(b) Debtors’ Estimate of Outstanding Claims on the Effective Date**

The Debtors and their advisors have conducted an extensive analysis to estimate the Debtors’ outstanding Claims pool and are continuing to review and analyze Claims. The Debtors have filed and intend to continue to file objections to Claims. In the aggregate, the Debtors believe that the sources above will be enough to satisfy the Debtors’ estimate of outstanding Claims by the Effective Date:

Uses	Low Claims	High Claims
Liquidating Trust funding	\$ (25.0)	\$ (25.0)
Remaining estate professional fees	(9.0)	(9.0)
503(b)(9)	(90.0)	(155.0)
Other Admin Claims	(50.0)	(50.0)
Secured	(18.0)	(18.0)
Priority Tax	(15.0)	(18.0)
Priority Non-Tax	(3.0)	(3.0)
<b>Total Uses</b>	<b>\$ (210.0)</b>	<b>\$ (278.0)</b>
<b>Total Potential Shortfall (without Litigation Proceeds)</b>	<b>\$ (36.5)</b>	<b>\$ (104.5)</b>

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But, there can be no assurance that the estimated Allowed amount of Claims will not be significantly more than projected, which, in turn, could cause the total recovery on Administrative Expense Claims to be lower. Some assumptions may not materialize, and unanticipated events and circumstances may affect the ultimate results. Therefore, the actual amount of Allowed Claims may vary from the Debtors' feasibility analysis, and the variation may be material.

**(c) Distribution Funding Sources**

The Initial Cash Pool, the Second Distribution, additional pre-Effective Date distributions to Settled Administrative Expense Claims, and post-Effective Date Distributions to Opt-Out Claims, will be funded from the following sources, as follows:

	<b>Within three (3) Business Days of Entry of the Confirmation Order<sup>11</sup></b>	<b>Post-Confirmation Date, Pre-Effective Date</b>	<b>Post-Effective Date</b>
<b>Initial Cash Pool (\$21 million) for the Initial Distribution to Opt-In Settled Admin Claims only</b>	\$16 million funded from: (i) unrestricted cash on hand and (ii) a minimum of \$3 million from the Carve-Out Account	\$5 million from Additional Asset Proceeds <i>and/or</i> Litigation Proceeds (to occur prior to the Initial Distribution)	N/A
<b>Second Distribution to Non Opt-Out Settled Admin Claims<sup>12</sup></b>	N/A	Subject to the Minimum Conditions, <sup>13</sup> from Additional Asset Proceeds <i>and/or</i> Litigation Proceeds	N/A
<b>Further Distribution(s) to Settled Admin Claims</b>	N/A	Subject to the Second Distribution, from Additional Asset Proceeds <i>and/or</i> Litigation Proceeds	N/A
<b>Distributions to Opt-Out Claims</b>	N/A	N/A	From Additional Asset Proceeds <i>and/or</i> Litigation Proceeds

<sup>11</sup> Within three (3) Business Days of entry of the Confirmation Order, an additional (i) \$15 million from cash on hand will be placed into the segregated Litigation Funding Account for funding of the litigation associated with the Jointly Asserted Causes of Action (the "**Litigation Funding**") and (ii) \$5 million will be placed into the segregated Cash Reserve Account for post-Confirmation estate costs including, without limitation, additional professional fees of the Debtors' and the Creditors' Committee not included in the Carve-Out Account as of the entry of the Confirmation Order (the "**Cash Reserve**").

<sup>12</sup> To the extent there are any amounts remaining for distribution after the Non Opt-out Settled Admin Claims have received the percentage recovery equal to the Initial Recovery, the Opt-In Settled Admin Claims shall share pro rata in such excess with the Non Opt-Out Settled Admin Claims.

<sup>13</sup> The Second Distribution shall not occur until each of the until each of the following conditions is met: (i) a total of \$25 million has been funded into the Litigation Funding Account in the aggregate, (ii) there has been a funding of \$10 million in the aggregate in the Cash Reserve Account and (iii) the Segregated Account has an additional \$10 million in cash (together, the "**Minimum Conditions**").

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**2. Risk of Non-Occurrence of Effective Date**

Although the Debtors believe that the Effective Date will occur soon after the Confirmation Date, there can be no assurance as to the timing of the Effective Date. If the conditions precedent to the Effective Date set forth in the Plan have not occurred or have not been waived as set forth in Article X of the Plan or the Debtors are unable to pay their obligations as required under section 1129(a)(9) of the Bankruptcy Code, then the Confirmation Order may be vacated. Any Distributions made on account of Settled Administrative Expense Claims shall not be subject to disgorgement, including without limitation, upon any conversion or dismissal of the Chapter 11 Cases.

**3. Risks Related to the Causes of Action**

There is no guarantee as to the success of pursuing any Cause of Action. The success of the Debtors and the Creditors' Committee or Liquidating Trust in pursuing any Cause of Action, as well as the expenses incurred in investigating and prosecuting the Causes of Action, may materially affect the recoveries for the holders of Allowed Claims.

**4. No Legal or Tax Advice Is Provided by this Disclosure Statement**

The contents of this notice should not be construed as legal, business, or tax advice. Each holder of a Claim should consult their own legal counsel and accountant as to legal, tax, and other matters concerning their Claim. This notice may not be relied upon for any purpose other than to determine how to elect how to be treated under the Administrative Expense Claims Consent Program.

**5. No Admission Made**

Nothing contained herein or in the Plan shall constitute an admission of, or shall be deemed evidence of, the tax or other legal effects of the Plan or Administrative Expense Claims Consent Program on the Debtors or holders of Claims or Interests.

For additional risk factors and considerations, including the position of Transform and/or ESL Parties, please review section VIII.A of the Disclosure Statement. Should you wish to obtain a copy of the Disclosure Statement, Plan, Confirmation Order, the Administrative Expense Claims Consent Program Term Sheet, or any other documents in these Chapter 11 Cases, you should contact the Debtors' Claims and Noticing Agent, Prime Clerk LLC by: (a) visiting the Debtors' restructuring website at: <https://restructuring.primeclerk.com/sears>; (b) writing to Sears Admin. Claims Consent Prgm Ballot Processing, c/o Prime Clerk LLC, 850 Third Avenue, Suite 412, Brooklyn, New York 11232; and/or (c) emailing [searsinfo@primeclerk.com](mailto:searsinfo@primeclerk.com). You may also obtain copies of any pleadings filed in the Chapter 11 Cases for a fee via PACER at: <http://www.vaeb.uscourts.gov>.

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**EXHIBIT A**

**OPT-IN BALLOT**

SRF 36417

Voter ID: 713614

**PLEASE FOLLOW THESE INSTRUCTIONS FOR SUBMITTING YOUR OPT-IN ELECTION. IF YOU ELECT TO OPT-IN TO THE ADMINISTRATIVE EXPENSE CLAIMS CONSENT PROGRAM, PLEASE COMPLETE, SIGN, DATE, AND TRANSMIT THIS OPT-IN BALLOT SO THAT IT IS ACTUALLY RECEIVED BY THE CLAIMS AND NOTICING AGENT ON OR BEFORE NOVEMBER 18, 2019, AT 4:00 P.M. (PREVAILING EASTERN TIME)**

**YOU MAY RETURN YOUR OPT-IN BALLOT IN THE PRE-ADDRESSED, PRE-PAID RETURN ENVELOPE PROVIDED OR VIA FIRST CLASS MAIL, HAND DELIVERY, OR OVERNIGHT COURIER, TO:**

**SEARS ADMIN. CLAIMS CONSENT PRGM BALLOT PROCESSING  
C/O PRIME CLERK LLC  
850 THIRD AVENUE, SUITE 412  
BROOKLYN, NEW YORK 11232**

**To Submit Your Opt-In Ballot Via E-Ballot**

To submit your Opt-In via E-Ballot, visit <https://restructuring.primeclerk.com/sears>. Click on the "Submit E-Ballot" section of the website and follow the instructions to submit your Opt-In Ballot.

IMPORTANT NOTE: You will need the following information to retrieve and submit your electronic Opt-In Ballot:

Unique E-Ballot ID#: 182353801039931

E-Ballot is the sole manner in which Opt-In will be accepted via electronic or online transmission. Opt-In Ballots submitted by facsimile, email or other means of electronic transmission will not be valid. Any Opt-In submitted through E-Ballot with the Holder's electronic signature will be deemed to be immediately legally valid and effective.

Please complete and submit an electronic Opt-In Ballot for each E-Ballot ID# you receive, as applicable.

Holders who cast an Opt-In using E-Ballot should NOT also submit a Paper Copy.

**To Submit Your Opt-In Ballot Via Paper Copy**

To submit your Opt-In via Paper Opt-In Ballot, complete items 1, 2, and 3 below and submit your Paper Opt-In Ballot in the pre-addressed, pre-paid return envelope provided or by first-class mail, hand delivery, or overnight courier to:

Sears Admin. Claims Consent Prgm Ballot Processing  
c/o Prime Clerk LLC  
850 Third Avenue, Suite 412  
Brooklyn, New York 11232

**Item 1. Amount of Administrative Expense Claim(s).**

The undersigned hereby certifies that as of the date of completion of this Opt-In Ballot, the undersigned asserts it was the Holder of an Administrative Expense Claim(s) in the following aggregate amount:<sup>1</sup>

\$ 700320

<sup>1</sup> This amount should represent the amount of your previously-asserted Administrative Expense Claim(s). If the Debtors do not have a specific Administrative Expense Claim amount on file for you, the box in Item 1 of this Opt-In Ballot will be blank. For reference purposes, you should insert the relevant amount of your alleged Administrative Expense Claim; however, for the avoidance of doubt, this Opt-In Ballot is not to be used to assert your Administrative Expense Claim(s). For more information about asserting an Administrative Expense Claim(s), visit the Debtors' case



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**Item 2. Administrative Expense Claims Consent Program Election.** You may elect to opt-in to the Administrative Expense Claims Consent Program by checking the box below and returning this Opt-In Ballot to the Claims and Noticing Agent on or before the Opt-In/Opt-Out Deadline pursuant to the instructions set forth herein. If you return this Opt-In Ballot but do not check the box below or do not return this Opt-In Ballot, you will not be entitled to the Initial Distribution. If you submit multiple Opt-In Ballots, your last timely received Opt-In Ballot shall control. Election to withhold consent is at your option.



**THE HOLDER OF THE ADMINISTRATIVE EXPENSE CLAIM(S) SET FORTH IN  
ITEM 1 ELECTS TO OPT-IN TO THE ADMINISTRATIVE EXPENSE CLAIMS  
CONSENT PROGRAM.**

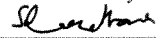
**Item 3. Acknowledgments.** By signing this Opt-In Ballot, the undersigned Holder of an Administrative Expense Claim(s) identified in Item 1 above certifies that (i) it is the Holder of the Administrative Expense Claim(s) identified in Item 1 above or (ii) it has full power and authority to act on behalf of the Holder of the Administrative Expense Claim(s) identified in Item 1 above.

**AMI VENTURES, INC.**

Name

Social Security or Federal Tax I.D. No. (optional)

**Signature:**

  
SALENE KRAEMER (Nov 18, 2019)

**Email:** SALENE@MAZURKRAEMER.COM

Signature

**SALENE KRAEMER**

If by Authorized Agent, Name and Title

Name of Institution

**MAZURKRAEMER BUSINESS LAW**

Street Address

**331 JONQUIL PLACE**

City, State, Zip Code

**PITTSBURGH PA 15228**

Telephone Number

**412-427-7075**

Email Address

**SALENE@MAZURKRAEMER.COM 11.18.2019**

Date Completed

**If you elect to opt-in to the Administrative Expense Claims Consent Program, please return your Opt-In Ballot promptly.** If you have any questions regarding this Opt-In Ballot or the procedures for opting out, please contact the Debtors' Claims and Noticing Agent, by: (a) visiting the Debtors' restructuring website at: <https://restructuring.primeclerk.com/sears>; (b) writing to Sears Admin. Claims Consent Prgm Ballot Processing, c/o Prime Clerk LLC, 850 Third Avenue, Suite 412, Brooklyn, New York 11232; and/or (c) emailing [searsinfo@primeclerk.com](mailto:searsinfo@primeclerk.com).

If the Claims and Noticing Agent does **not** actually receive the Opt-In Form on or before November 18, 2019, at 4:00 p.m., prevailing Eastern Time indicating your intent to opt-in to the Administrative Expense Claims Consent Program (and if the Opt-In/Opt-Out Deadline is not extended), your opt-in election will not be effective.

website: <https://restructuring.primeclerk.com/sears>. The Debtors reserve the right to dispute and validate the amount of your asserted Administrative Expense Claim(s).

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**EXHIBIT B**

**OPT-OUT BALLOT**

SRF 36417

Voter ID: 713614

**PLEASE FOLLOW THESE INSTRUCTIONS FOR SUBMITTING YOUR OPT-OUT ELECTION. IF YOU ELECT TO OPT-OUT OF THE ADMINISTRATIVE EXPENSE CLAIMS CONSENT PROGRAM, PLEASE COMPLETE, SIGN, DATE, AND TRANSMIT THIS OPT-OUT BALLOT SO THAT IT IS ACTUALLY RECEIVED BY THE CLAIMS AND NOTICING AGENT ON OR BEFORE NOVEMBER 18, 2019, AT 4:00 P.M. (PREVAILING EASTERN TIME)**

**IF YOU WOULD LIKE TO RECEIVE THE BENEFITS OF THE ADMINISTRATIVE EXPENSE CLAIMS CONSENT PROGRAM AND DO NOT WISH TO OPT-OUT OF THE ADMINISTRATIVE EXPENSE CLAIMS CONSENT PROGRAM, YOU DO NOT NEED TO TAKE ANY FURTHER ACTION AT THIS TIME.**

**YOU MAY RETURN YOUR OPT-OUT BALLOT IN THE PRE-ADDRESSED, PRE-PAID RETURN ENVELOPE PROVIDED OR VIA FIRST CLASS MAIL, HAND DELIVERY, OR OVERNIGHT COURIER, TO:**

**SEARS ADMIN. CLAIMS CONSENT PRGM BALLOT PROCESSING  
C/O PRIME CLERK LLC  
850 THIRD AVENUE, SUITE 412  
BROOKLYN, NEW YORK 11232**

**To Submit Your Opt-Out Ballot Via E-Ballot**

To submit your Opt-Out via E-Ballot, visit <https://restructuring.primeclerk.com/sears>. Click on the "Submit E-Ballot" section of the website and follow the instructions to submit your Opt-Out Ballot.

IMPORTANT NOTE: You will need the following information to retrieve and submit your electronic Opt-Out Ballot:

Unique E-Ballot ID#: 182353801039931

E-Ballot is the sole manner in which Opt-Out will be accepted via electronic or online transmission. Opt-Out Ballots submitted by facsimile, email or other means of electronic transmission will not be valid. Any Opt-Out submitted through E-Ballot with the Holder's electronic signature will be deemed to be immediately legally valid and effective.

Please complete and submit an electronic Opt-Out Ballot for each E-Ballot ID# you receive, as applicable.

Holders who cast an Opt-Out using E-Ballot should NOT also submit a Paper Copy.

**To Submit Your Opt-Out Ballot Via Paper Copy**

To submit your Opt-Out via Paper Opt-Out Ballot, complete items 1, 2, and 3 below and submit your Paper Opt-Out Ballot in the pre-addressed, pre-paid return envelope provided or by first-class mail, hand delivery, or overnight courier to:

Sears Admin. Claims Consent Prgm Ballot Processing  
c/o Prime Clerk LLC  
850 Third Avenue, Suite 412  
Brooklyn, New York 11232

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**Item 1. Amount of Administrative Expense Claim(s).**

The undersigned hereby certifies that as of the date of completion of this Opt-Out Ballot, the undersigned asserts it was the Holder of an Administrative Expense Claim(s) in the following aggregate amount:<sup>1</sup>

\$ 700320

**Item 2. Administrative Expense Claims Consent Program Election.** You may elect to opt-out of the Administrative Expense Claims Consent Program by checking the box below and returning this Opt-Out Ballot to the Claims and Noticing Agent on or before the Opt-In/Opt-Out Deadline pursuant to the instructions set forth herein. If you return this Opt-Out Ballot but do not check the box below or do not return this Opt-Out Ballot, you will be bound by the Administrative Expense Claims Consent Program. If you submit multiple Opt-Out Ballots, your last timely received Opt-Out Ballot shall control. Election to withhold consent is at your option.



**THE HOLDER OF THE ADMINISTRATIVE EXPENSE CLAIM(S) SET FORTH IN  
ITEM 1 ELECTS TO OPT-OUT OF THE ADMINISTRATIVE EXPENSE CLAIMS  
CONSENT PROGRAM.**

**Item 3. Acknowledgments.** By signing this Opt-Out Ballot, the undersigned Holder of an Administrative Expense Claim(s) identified in Item 1 above certifies that (i) it is the Holder of the Administrative Expense Claim(s) identified in Item 1 above or (ii) it has full power and authority to act on behalf of the Holder of the Administrative Expense Claim(s) identified in Item 1 above.

**AMI VENTURES, INC.**

Name

Social Security or Federal Tax I.D. No. (optional)

Signature:

*SALENE KRAEMER (Nov 18, 2019)*  
Signature

Email: SALENE@MAZURKRAEMER.COM

If by Authorized Agent, Name and Title

**SALENE KRAEMER**

Name of Institution

Street Address

**MAZURKRAEMER BUSINESS LAW**

City, State, Zip Code

**331 JONQUIL PLACE**

Telephone Number

**PITTSBURGH PA 15228**

Email Address

**SALENE@MAZURKRAEMER.COM 11.18.2019**

Date Completed

<sup>1</sup> This amount should represent the amount of your previously-asserted Administrative Expense Claim(s). If the Debtors do not have a specific Administrative Expense Claim amount on file for you, the box in Item 1 of this Opt-Out Ballot will be blank. For reference purposes, you should insert the relevant amount of your alleged Administrative Expense Claim; however, for the avoidance of doubt, this Opt-Out Ballot is not to be used to assert your Administrative Expense Claim(s). For more information about asserting an Administrative Expense Claim(s), visit the Debtors' case website: <https://restructuring.primeclerk.com/sears>. The Debtors reserve the right to dispute and validate the amount of your asserted Administrative Expense Claim(s).

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**If you elect to opt-out of the Administrative Expense Claims Consent Program, please return your Opt-Out Ballot promptly.** If you have any questions regarding this Opt-Out Ballot or the procedures for opting out, please contact the Debtors' Claims and Noticing Agent, by: (a) visiting the Debtors' restructuring website at: <https://restructuring.primeclerk.com/sears>; (b) writing to Sears Admin. Claims Consent Prgm Ballot Processing, c/o Prime Clerk LLC, 850 Third Avenue, Suite 412, Brooklyn, New York 11232; and/or (c) emailing [searsinfo@primeclerk.com](mailto:searsinfo@primeclerk.com).

If the Claims and Noticing Agent does **not** actually receive the Opt-Out Ballot on or before November 18, 2019, at 4:00 p.m., prevailing Eastern Time indicating your intent to opt-out of the Administrative Expense Claims Consent Program (and if the Opt-In/Opt-Out Deadline is not extended), your opt-out election will not be effective.





# EBallot\_182353801039931\_CXRHG28612

Final Audit Report

2019-11-18

Created:	2019-11-18
By:	Sears Claims (searsclaims@primeclerk.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAARYEzDOA9WupWz7xr0Ntl36qK5jmsZMgO

## "EBallot\_182353801039931\_CXRHG28612" History

-  Web Form created by Sears Claims (searsclaims@primeclerk.com)  
2019-11-18 - 8:49:49 PM GMT
-  Web Form filled in by SALENE KRAEMER (SALENE@MAZURKRAEMER.COM)  
2019-11-18 - 8:51:50 PM GMT- IP address: 71.182.203.19
-  (User email address provided through API User-Agent: Mozilla/5.0 (Macintosh; Intel Mac OS X 10\_14\_6) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/78.0.3904.87 Safari/537.36)  
2019-11-18 - 8:51:53 PM GMT- IP address: 71.182.203.19
-  Signed document emailed to Sears Claims (searsclaims@primeclerk.com) and SALENE KRAEMER (SALENE@MAZURKRAEMER.COM)  
2019-11-18 - 8:51:53 PM GMT

## **Exhibit C**



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WEIL, GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, New York 10153  
Telephone: (212) 310-8000  
Facsimile: (212) 310-8007  
Ray C. Schrock, P.C.  
Jacqueline Marcus  
Garrett A. Fail  
Sunny Singh  
*Attorneys for Debtors  
and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X	
	:
<b>In re</b>	:
	:
<b>SEARS HOLDINGS CORPORATION, et al.,</b>	:
	:
<b>Debtors.<sup>1</sup></b>	:
	:
-----X	

**Chapter 11**  
**Case No. 18-23538 (RDD)**  
**(Jointly Administered)**

**NOTICE OF  
(I) BALLOT TO OPT-IN TO ADMINISTRATIVE EXPENSE CLAIMS CONSENT PROGRAM AND  
(II) BALLOT TO OPT-OUT OF ADMINISTRATIVE EXPENSE CLAIMS CONSENT PROGRAM**

**PLEASE READ AND FOLLOW THE ENCLOSED INSTRUCTIONS CAREFULLY BEFORE  
COMPLETING THE (I) OPT-IN BALLOT ATTACHED HERETO AS EXHIBIT A OR  
(II) OPT-OUT BALLOT ATTACHED HERETO AS EXHIBIT B.**

**IF YOU DO NOT TAKE ANY ACTION, YOU WILL BE DEEMED TO BE BOUND BY THE  
ADMINISTRATIVE EXPENSE CLAIMS CONSENT PROGRAM, BUT NOT ENTITLED TO THE  
BENEFITS THAT WILL BE PROVIDED TO HOLDERS OF ADMINSTRATIVE EXPENSE CLAIMS  
WHO TIMELY OPT IN TO THE ADMINISTRATIVE EXPENSE CLAIMS CONSENT PROGRAM, AS  
DESCRIBED BELOW.**

<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, are set forth in the *Order Directing Joint Administration of Related Chapter 11 Cases* (ECF No. 118). The location of the Debtors' service address is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

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**IN ORDER FOR YOUR OPT-IN BALLOT OR OPT-OUT BALLOT TO BE EFFECTIVE,  
THE APPLICABLE BALLOT MUST BE ACTUALLY RECEIVED BY  
NOVEMBER 18, 2019,<sup>2</sup> AT 4:00 P.M. (PREVAILING EASTERN TIME)  
(THE "OPT-IN/OPT-OUT DEADLINE").**

FAILURE TO OPT-IN TO THE ADMINISTRATIVE EXPENSE CLAIMS CONSENT PROGRAM BY COMPLETING AND TIMELY SUBMITTING AN OPT-IN BALLOT MEANS YOU WILL NOT BE ENTITLED PARTICIPATE IN TO THE INITIAL DISTRIBUTION (AS DEFINED HEREIN).

FAILURE TO OPT-OUT OF THE ADMINISTRATIVE EXPENSE CLAIMS CONSENT PROGRAM BY COMPLETING AND TIMELY SUBMITTING AN OPT-OUT BALLOT WILL BIND YOU TO THE TERMS OF THE ADMINISTRATIVE EXPENSE CLAIMS CONSENT PROGRAM.

On October 15, 2019, the Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**") entered an order confirming the *Modified Second Amended Joint Chapter 11 Plan of Sears Holdings Corporation and its Affiliated Debtors* [ECF No. 5293] (the "**Plan**"),<sup>3</sup> approving, among other things, a proposed consent program for holders of Administrative Expense Claims (the "**Administrative Expense Claims Consent Program**") by and among the above-captioned debtors and debtors in possession (collectively, the "**Debtors**"), the Creditors' Committee and the Ad Hoc Vendor Group<sup>4</sup> [ECF No. 5370] (the "**Confirmation Order**").<sup>5</sup>

You are receiving the opt-in ballot (the "**Opt-In Ballot**"), attached hereto as **Exhibit A**, and the opt-out ballot (the "**Opt-Out Ballot**" and together with the Opt-In Ballot, the "**Election Ballots**"), attached hereto as **Exhibit B**, because, as a holder of an Administrative Expense Claim,<sup>6</sup> you are entitled to opt-in to or opt-out of the Administrative Expense Claims Consent Program.

**If you do not take any action, you will be deemed to have opted in and will be bound by the Administrative Expense Claims Consent Program, but not entitled to any benefits that will be provided to holders of Administrative Expense Claims who affirmatively opt-in to the Administrative Expense Claims Consent Program prior to the Opt-In/Opt-Out Deadline, namely, participation in an initial distribution of \$21 million on or about December 1, 2019 to all holders of Administrative Expense Claims who opt-in to the Administrative Expense Claims Consent Program.**

All Holders of Administrative Expense Claims (other than the Ad Hoc Vendor Group that is deemed to have opted-in) have an option to opt-in to or opt-out of the Administrative Expense Claims Consent Program and releases contained therein. **The Creditors' Committee and the Debtors recommend that you affirmatively opt-in to and do not opt-out the Administrative Expense Claims Consent Program.**

<sup>2</sup> Thirty-three (33) days after service of this notice.

<sup>3</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Confirmation Order or the Plan.

<sup>4</sup> The "**Ad Hoc Vendor Group**" means collectively, Whitebox Asymmetric Partners, LP, Whitebox Multi-Strategy Partners, LP, Hain Capital Investors Master Fund, Ltd., and Cherokee Debt Acquisition, LLC.

<sup>5</sup> Copies of the Plan, Confirmation Order, and the Administrative Expense Claims Consent Program Term Sheet may be accessed free of charge by visiting the website maintained by the Debtors' agent, Prime Clerk, LLC (the "**Claims and Noticing Agent**") at <https://restructuring.primeclerk.com/sears>.

<sup>6</sup> Specifically, you are receiving the Election Ballots because either (i) the Debtors believe you may be a Holder of an Administrative Expense Claim as of August 6, 2019 or (ii) you filed a proof of Administrative Expense Claim, filed a motion seeking allowance of an Administrative Expense Claim, or have otherwise asserted an Administrative Expense Claim in these Chapter 11 Cases.

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**TREATMENT OF ADMINISTRATIVE EXPENSE CLAIMHOLDERS WHO AFFIRMATIVELY OPT-IN**

All holders of Allowed Administrative Expense Claims that affirmatively opt-in (the “**Opt-In Settled Admin Claims**”) to the Administrative Expense Claims Consent Program prior to the Opt-In/Opt-Out Deadline shall receive, among other things:<sup>7</sup>

- Their pro rata share of \$21 million (“**Initial Cash Pool**”), on or about December 1, 2019 (the percentage recovery, the “**Initial Recovery**”);
- total recovery capped at 75% of the Allowed Administrative Expense Claim;
- such \$21 million shall only be available to holders of Opt-In Settled Admin Claims who consensually agree with the Debtors to the Allowed amount of the Opt-In Settled Admin Claims;
- consensual reconciliation of the Allowed amount of Opt-In Settled Admin Claims (including on account of 503(b)(9) and 503(b)(1) issues regarding inducement, date of receipt, port of origin, etc., and any exposure on account of preference actions), to be completed within 30 days from the date of receipt of the Opt-In Ballot (the “**Expedited Reconciliation**”);
- to the extent the Debtors, the Creditors’ Committee, and the holder of the Opt-In Settled Admin Claim are unable to consensually resolve the Allowed amount, such resolution shall be subject to reconciliation on an agreed-upon schedule as reasonably agreed to by the Debtors, the Creditors’ Committee, and the applicable holder of an Opt-In Settled Admin Claim;
- for the avoidance of doubt, any waiver or settlement of any preference action shall be considered on a case-by-case basis; and
- holders who do not agree with the Debtors and the Creditors’ Committee on the Allowed amount of Opt-In Settled Admin Claims shall be deemed to hold a Non Opt-Out Settled Admin Claim.

**TREATMENT OF ADMINISTRATIVE EXPENSE CLAIMHOLDERS WHO NEITHER OPT-IN NOR OPT-OUT**

All Holders of an Allowed Administrative Expense Claim against the Debtors who neither (i) opt-in to the Administrative Expense Claims Consent Program nor (ii) opt-out of the Administrative Expense Claims Consent Program prior to the Opt-In/Opt-Out Deadline (the “**Non Opt-Out Settled Admin Claims**,” and together with the Opt-In Settled Admin Claims, the “**Settled Administrative Expense Claims**”) shall receive, among other things:

- its pro rata share of the Second Distribution, which will be shared only by other holders of Non Opt-Out Settled Admin Claims until they have received a percentage of distribution on their Non Opt-Out Settled Admin Claims that is equal to the Initial Recovery provided to holders of Opt-In Settled Claims;
- total recovery capped at 80% of the Allowed Administrative Expense Claim (together with the Initial Recovery, the “**Settled Admin Expense Claims Recovery**”);
- Expedited Reconciliation to be completed within 30 days from the Opt-In/Opt-Out Deadline;
- to the extent the Debtors, the Creditors’ Committee, and the holder of the Non Opt-Out Settled Admin Claim are unable to consensually resolve the Allowed amount, such resolution shall be subject to reconciliation on an agreed-upon schedule as reasonably agreed to by the Debtors, the Creditors’ Committee, and the applicable holder of a Non Opt-Out Settled Admin Claim; and
- any waiver or settlement of any preference action shall be considered on a case-by-case basis.

All holders of Administrative Expense Claims who do not opt out of the Administrative Expense Claims Consent Program will be deemed to be satisfied in full on account of such claim once they have received payment in cash equal to (i) 75% of the applicable Allowed Administrative Expense Claim on account of Opt-In Settled Admin

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<sup>7</sup> The following is an illustrative summary of the benefits of the Administrative Expense Claims Consent Program and is qualified in its entirety by reference to the applicable provisions in the Confirmation Order.

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Claims, and (ii) 80% of the applicable Allowed Administrative Expense Claim on account of Non Opt-Out Settled Admin Claims. Any Distributions made on account of Settled Administrative Expense Claims shall not be subject to disgorgement, including without limitation, upon any conversion or dismissal of the Chapter 11 Cases. And upon entry of the Confirmation Order, all Settled Administrative Expense Claims shall be Allowed against the Debtors in these Chapter 11 Cases on a consolidated basis, or upon any conversion or dismissal of the Chapter 11 Cases.

#### **TREATMENT OF ADMINISTRATIVE EXPENSE CLAIMHOLDERS WHO OPT-OUT**

If you **opt out of the Administrative Expense Claims Consent Program** prior to the Opt-In/Opt-Out Deadline, you will retain the right to receive payment of the Allowed 100% of your Administrative Expense Claim, but payment of your Administrative Expense Claim shall occur on the latest of (i) the Effective Date, (ii) the first Business Day after the date that is thirty (30) calendar days after the date such Administrative Expense Claim is Allowed, and (iii) the next Distribution Date after such Administrative Expense Claim is Allowed. Holders of opt-out Claims will not be entitled to participate in the Initial Distribution, Second Distribution, or any further distribution until the Plan has become effective or the Settled Administrative Expense Claims have been satisfied.

#### **ADDITIONAL INFORMATION**

Pursuant to the Administrative Expense Claims Consent Program, holders bound by the Administrative Expense Claims Consent Program shall be paid in the following order of priority: (1) Holders of Opt-In Settled Admin Claims of their pro rata share of the Initial Cash Pool; (2) Holders of Non Opt-Out Settled Admin Claims of their pro rata share up to a percentage recovery equal to the Initial Recovery; and (3) all Holders bound by the Administrative Expense Claims Consent Program of the remaining unpaid amount of their Allowed Administrative Expense Claims up to the Settled Admin Expense Claims Recovery.

Each Holder of a Settled Administrative Expense Claim also agrees (1) to support the Plan; and (2) that acceptance of and consent to the Administrative Expense Claims Consent Program will be deemed consent to the Plan, acceptance of the treatment under the Plan in satisfaction of section 1129(a)(9) of the Bankruptcy Code, and agreement to provides the releases included in the Administrative Expense Claims Consent Program.

#### **Treatment of Holders of Administrative Expense Claims Under Administrative Expense Claims Consent Program**

	<b>Opt-In Settled Admin Claims</b>	<b>Non Opt-Out Settled Admin Claims</b>	<b>Opt-Out Administrative Expense Claims</b>
<b>Maximum Recovery on Account of Allowed Administrative Expense Claim</b>	75% of Allowed Amount	80% of Allowed Amount	100% of Allowed Amount
<b>Participates in Distribution of \$21 million Initial Cash Pool on or about December 1, 2019</b>	Yes	No	No
<b>Participates in Second Distribution</b>	No <sup>8</sup>	Yes	No
<b>Distribution on the Later of (i) the Effective Date, (ii) 30 days after Allowance of the Claim, and (iii) the next Distribution Date after Allowance of the Claim</b>	N/A	N/A	Yes

<sup>8</sup> To the extent there are any amounts remaining for distribution after the Non Opt-out Settled Admin Claims have received the percentage recovery equal to the Initial Recovery, the Opt-In Settled Admin Claims shall share pro rata in such excess with the Non Opt-Out Settled Admin Claims.

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<b>Claims Reconciliation to occur</b>	Within 30 days of receipt of Opt-In Ballot	Within 30 days after Opt-In/Opt-Out Deadline	In ordinary course
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#### **INSTRUCTION FOR OPTING-IN OR OPTING-OUT**

In order to **opt-in** to or **opt-out** of the Administrative Expense Claims Consent Program, you must complete, execute, and submit your Opt-In Ballot or Opt-Out Ballot to the Claims and Noticing Agent so that your Opt-In Ballot or Opt-Out Ballot is **actually received** by the Claims and Noticing Agent on or before the Opt-In/Opt-Out Deadline, which is **November 18, 2019, at 4:00 p.m., prevailing Eastern Time**.

**You are strongly encouraged to review the Administrative Expense Claims Consent Program Term Sheet and the Plan before you make an election. You may wish to seek legal advice concerning the Administrative Expense Claims Consent Program and the Election Ballots.**

**Acceptable Methods to Complete and Submit Your Election Ballots.** You may elect to opt-in to or opt-out of the Administrative Expense Claims Consent Program by completing and submitting (i) an electronic Opt-In Ballot or Opt-Out Ballot through the dedicated, online portal maintained by the Claims and Noticing Agent (“**E-Ballot**”) or (ii) one of the paper-copy Election Ballots (the “**Paper Election Ballots**”). In either case (E-Ballot or Paper Election Ballots), you must submit your Opt-In Ballot or Opt-Out Ballot to the Claims and Noticing Agent so that it is **actually received** by the Claims and Noticing Agent on or before the Opt-In/Opt-Out Deadlines.

#### **CERTAIN RISK FACTORS TO BE CONSIDERED**

##### **1. Risks Related to Debtors’ Ability to Make Distributions**

###### **(a) Debtors’ Assets Available for Distributions**

As described in greater detail in the Griffith Declaration, Murphy Declaration, and Transier Declaration,<sup>9</sup> the Debtors’ Assets as of the September 18, 2019 include approximately \$173.5 million comprised of (i) approximately \$50.1 million in cash on hand, (ii) \$33.4 million on account of other Assets to be monetized, and (iii) approximately \$97 million owed by Transform for the assumptions of 503(b)(9) Claims<sup>10</sup> (the “**Additional Asset Proceeds**”):

<b>Sources</b>	
Cash on Hand at 9/18/19	\$ 50.1
Calder Net Proceeds	10.0
Real Estate Proceeds	13.1
De Minimis Assets	5.3
2017 EDA Funds	5.0
Transform 503(b)(9) Obligations	90.0
<b>Total Sources</b>	<b>\$ 173.5</b>

**In addition**, the Debtors believe they will receive significant recoveries from the proceeds of certain valuable litigation assets, including avoidance action arising under section 547 of the Bankruptcy Code or any comparable “preference” action arising under applicable non-bankruptcy law (collectively, the “**Preference Actions**”), certain

<sup>9</sup> Declaration of Brian J. Griffith in Support of Confirmation of Modified Second Amended Joint Chapter 11 Plan of Liquidation of Sears Holdings Corporation and its Affiliated Debtors (ECF No. 5148) (the “**Griffith Declaration**”), Declaration of William Murphy in Support of Confirmation of Modified Second Amended Joint Chapter 11 Plan of Liquidation of Sears Holdings Corporation and its Affiliated Debtors (ECF No. 5149) (the “**Murphy Declaration**”), Declaration of William L. Transier in Support of Confirmation of Modified Second Amended Joint Chapter 11 Plan of Liquidation of Sears Holdings Corporation and its Affiliated Debtors (ECF No. 5146) (the “**Transier Declaration**”).

<sup>10</sup> The Debtors believe that pursuant to section 2.3(k)(ix) of the Asset Purchase Agreement, Transform is obligated to assume approximately \$97 million on account of 503(b)(9) Claims. The \$90 million reflected herein ties to the \$90 million of estimated 503(b)(9) Claims; to the extent the 503(b)(9) Claims are in excess of \$90 million, Transform shall be liable to assume up to \$97 million on account of 503(b)(9) Claims pursuant to the Asset Purchase Agreement. Transform disputes that it owes such amounts to the Debtors.

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prepetition related party transaction claims against ESL Investments, Inc. and its affiliates (“ESL”) and other parties, and potential settlements with insurers with respect to claims against the D&O Policy (together the “**Litigation Proceeds**”), although there can be no assurance of any recovery:

- **Preference Actions.** The Debtors estimate that they will receive at least approximately \$100 million in recoveries from Preference Actions out of an excess of \$1.345 billion of gross total transfers in the preference window, which is consistent with comparable transactions where the average range of recoveries is from 11.4% if the gross total transfers pursued or, alternatively 23.7% of those transfers, net of subsequent new value. *See* Griffith Decl., ¶¶ 64-70.
- **ESL Litigation.** The Debtors’ Restructuring Subcommittee and the Creditors’ Committee both have investigated the prepetition related party transaction claims and concluded that such claims are meritorious. On April 17, 2019 the Restructuring Subcommittee, on behalf of certain of the Debtors, filed an adversary complaint against ESL Investments, Inc., its affiliates, various third parties, and certain of the Debtors’ directors and officers (ECF No. 3278) (the “**Subcommittee Adversary Complaint**”), seeking over \$2 billion in damages arising from certain prepetition related party transactions. *See* Transier Decl., ¶¶ 20-27. As of the date hereof, the Court has not heard any arguments or considered any evidence in connection with the Subcommittee Adversary Complaint. Current and prospective defendants dispute the validity of Claims asserted in the Subcommittee Adversary Complaint, and there is no assurance of any recovery.
- **D&O Insurance.** The Debtors believe they may be able to receive significant recoveries against available D&O Policies on account of Preserved Causes of Action against the Specified Directors and Officers. The Debtors believe that there is at least approximately \$150 million of available directors and officers liability insurance that provides a source of recovery to the Debtor plaintiffs in the Subcommittee Adversary Complaint against parties (in their capacity as directors and/or officers) who are covered by such insurance. Certain defendants (such as ESL, Lampert and the Seritage parties) in the Subcommittee Adversary Complaint may also be liable for sums separate and apart from any available insurance coverage. *See* Transier Decl., ¶ 28. Certain insurers have disclaimed coverage under certain of the D&O Policies.

There can be no assurance that the Debtors will be able to successfully monetize their Assets in the projected amounts or when such Assets will be monetized. There is a risk that the Net Proceeds of Total Assets, including the Litigation Proceeds, may be significantly less than projected, which, in turn, could cause the amount and timing of Distributions to adversely change substantially. Further, unanticipated events and circumstances may affect the ultimate recoveries.

#### (b) Debtors’ Estimate of Outstanding Claims on the Effective Date

The Debtors and their advisors have conducted an extensive analysis to estimate the Debtors’ outstanding Claims pool and are continuing to review and analyze Claims. The Debtors have filed and intend to continue to file objections to Claims. In the aggregate, the Debtors believe that the sources above will be enough to satisfy the Debtors’ estimate of outstanding Claims by the Effective Date:

Uses	Low Claims	High Claims
Liquidating Trust funding	\$ (25.0)	\$ (25.0)
Remaining estate professional fees	(9.0)	(9.0)
503(b)(9)	(90.0)	(155.0)
Other Admin Claims	(50.0)	(50.0)
Secured	(18.0)	(18.0)
Priority Tax	(15.0)	(18.0)
Priority Non-Tax	(3.0)	(3.0)
<b>Total Uses</b>	<b>\$ (210.0)</b>	<b>\$ (278.0)</b>
<b>Total Potential Shortfall (without Litigation Proceeds)</b>	<b>\$ (36.5)</b>	<b>\$ (104.5)</b>

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But, there can be no assurance that the estimated Allowed amount of Claims will not be significantly more than projected, which, in turn, could cause the total recovery on Administrative Expense Claims to be lower. Some assumptions may not materialize, and unanticipated events and circumstances may affect the ultimate results. Therefore, the actual amount of Allowed Claims may vary from the Debtors' feasibility analysis, and the variation may be material.

**(c) Distribution Funding Sources**

The Initial Cash Pool, the Second Distribution, additional pre-Effective Date distributions to Settled Administrative Expense Claims, and post-Effective Date Distributions to Opt-Out Claims, will be funded from the following sources, as follows:

	<b>Within three (3) Business Days of Entry of the Confirmation Order<sup>11</sup></b>	<b>Post-Confirmation Date, Pre-Effective Date</b>	<b>Post-Effective Date</b>
<b>Initial Cash Pool (\$21 million) for the Initial Distribution to Opt-In Settled Admin Claims only</b>	\$16 million funded from: (i) unrestricted cash on hand and (ii) a minimum of \$3 million from the Carve-Out Account	\$5 million from Additional Asset Proceeds <i>and/or</i> Litigation Proceeds (to occur prior to the Initial Distribution)	N/A
<b>Second Distribution to Non Opt-Out Settled Admin Claims<sup>12</sup></b>	N/A	Subject to the Minimum Conditions, <sup>13</sup> from Additional Asset Proceeds <i>and/or</i> Litigation Proceeds	N/A
<b>Further Distribution(s) to Settled Admin Claims</b>	N/A	Subject to the Second Distribution, from Additional Asset Proceeds <i>and/or</i> Litigation Proceeds	N/A
<b>Distributions to Opt-Out Claims</b>	N/A	N/A	From Additional Asset Proceeds <i>and/or</i> Litigation Proceeds

<sup>11</sup> Within three (3) Business Days of entry of the Confirmation Order, an additional (i) \$15 million from cash on hand will be placed into the segregated Litigation Funding Account for funding of the litigation associated with the Jointly Asserted Causes of Action (the "**Litigation Funding**") and (ii) \$5 million will be placed into the segregated Cash Reserve Account for post-Confirmation estate costs including, without limitation, additional professional fees of the Debtors' and the Creditors' Committee not included in the Carve-Out Account as of the entry of the Confirmation Order (the "**Cash Reserve**").

<sup>12</sup> To the extent there are any amounts remaining for distribution after the Non Opt-out Settled Admin Claims have received the percentage recovery equal to the Initial Recovery, the Opt-In Settled Admin Claims shall share pro rata in such excess with the Non Opt-Out Settled Admin Claims.

<sup>13</sup> The Second Distribution shall not occur until each of the until each of the following conditions is met: (i) a total of \$25 million has been funded into the Litigation Funding Account in the aggregate, (ii) there has been a funding of \$10 million in the aggregate in the Cash Reserve Account and (iii) the Segregated Account has an additional \$10 million in cash (together, the "**Minimum Conditions**").

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**2. Risk of Non-Occurrence of Effective Date**

Although the Debtors believe that the Effective Date will occur soon after the Confirmation Date, there can be no assurance as to the timing of the Effective Date. If the conditions precedent to the Effective Date set forth in the Plan have not occurred or have not been waived as set forth in Article X of the Plan or the Debtors are unable to pay their obligations as required under section 1129(a)(9) of the Bankruptcy Code, then the Confirmation Order may be vacated. Any Distributions made on account of Settled Administrative Expense Claims shall not be subject to disgorgement, including without limitation, upon any conversion or dismissal of the Chapter 11 Cases.

**3. Risks Related to the Causes of Action**

There is no guarantee as to the success of pursuing any Cause of Action. The success of the Debtors and the Creditors' Committee or Liquidating Trust in pursuing any Cause of Action, as well as the expenses incurred in investigating and prosecuting the Causes of Action, may materially affect the recoveries for the holders of Allowed Claims.

**4. No Legal or Tax Advice Is Provided by this Disclosure Statement**

The contents of this notice should not be construed as legal, business, or tax advice. Each holder of a Claim should consult their own legal counsel and accountant as to legal, tax, and other matters concerning their Claim. This notice may not be relied upon for any purpose other than to determine how to elect how to be treated under the Administrative Expense Claims Consent Program.

**5. No Admission Made**

Nothing contained herein or in the Plan shall constitute an admission of, or shall be deemed evidence of, the tax or other legal effects of the Plan or Administrative Expense Claims Consent Program on the Debtors or holders of Claims or Interests.

For additional risk factors and considerations, including the position of Transform and/or ESL Parties, please review section VIII.A of the Disclosure Statement. Should you wish to obtain a copy of the Disclosure Statement, Plan, Confirmation Order, the Administrative Expense Claims Consent Program Term Sheet, or any other documents in these Chapter 11 Cases, you should contact the Debtors' Claims and Noticing Agent, Prime Clerk LLC by: (a) visiting the Debtors' restructuring website at: <https://restructuring.primeclerk.com/sears>; (b) writing to Sears Admin. Claims Consent Prgm Ballot Processing, c/o Prime Clerk LLC, 850 Third Avenue, Suite 412, Brooklyn, New York 11232; and/or (c) emailing [searsinfo@primeclerk.com](mailto:searsinfo@primeclerk.com). You may also obtain copies of any pleadings filed in the Chapter 11 Cases for a fee via PACER at: <http://www.vaeb.uscourts.gov>.



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**EXHIBIT A**

**OPT-IN BALLOT**

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Voter ID: 716497

**PLEASE FOLLOW THESE INSTRUCTIONS FOR SUBMITTING YOUR OPT-IN ELECTION. IF YOU ELECT TO OPT-IN TO THE ADMINISTRATIVE EXPENSE CLAIMS CONSENT PROGRAM, PLEASE COMPLETE, SIGN, DATE, AND TRANSMIT THIS OPT-IN BALLOT SO THAT IT IS ACTUALLY RECEIVED BY THE CLAIMS AND NOTICING AGENT ON OR BEFORE NOVEMBER 18, 2019, AT 4:00 P.M. (PREVAILING EASTERN TIME)**

**YOU MAY RETURN YOUR OPT-IN BALLOT IN THE PRE-ADDRESSED, PRE-PAID RETURN ENVELOPE PROVIDED OR VIA FIRST CLASS MAIL, HAND DELIVERY, OR OVERNIGHT COURIER, TO:**

**SEARS ADMIN. CLAIMS CONSENT PRGM BALLOT PROCESSING  
C/O PRIME CLERK LLC  
850 THIRD AVENUE, SUITE 412  
BROOKLYN, NEW YORK 11232**

**To Submit Your Opt-In Ballot Via E-Ballot**

To submit your Opt-In via E-Ballot, visit <https://restructuring.primeclerk.com/sears>. Click on the "Submit E-Ballot" section of the website and follow the instructions to submit your Opt-In Ballot.

IMPORTANT NOTE: You will need the following information to retrieve and submit your electronic Opt-In Ballot:

Unique E-Ballot ID#: 182353801040864

E-Ballot is the sole manner in which Opt-In will be accepted via electronic or online transmission. Opt-In Ballots submitted by facsimile, email or other means of electronic transmission will not be valid. Any Opt-In submitted through E-Ballot with the Holder's electronic signature will be deemed to be immediately legally valid and effective.

Please complete and submit an electronic Opt-In Ballot for each E-Ballot ID# you receive, as applicable.

Holders who cast an Opt-In using E-Ballot should NOT also submit a Paper Copy.

**To Submit Your Opt-In Ballot Via Paper Copy**

To submit your Opt-In via Paper Opt-In Ballot, complete items 1, 2, and 3 below and submit your Paper Opt-In Ballot in the pre-addressed, pre-paid return envelope provided or by first-class mail, hand delivery, or overnight courier to:

Sears Admin. Claims Consent Prgm Ballot Processing  
c/o Prime Clerk LLC  
850 Third Avenue, Suite 412  
Brooklyn, New York 11232

**Item 1. Amount of Administrative Expense Claim(s).**

The undersigned hereby certifies that as of the date of completion of this Opt-In Ballot, the undersigned asserts it was the Holder of an Administrative Expense Claim(s) in the following aggregate amount:<sup>1</sup>

\$ 185576

<sup>1</sup> This amount should represent the amount of your previously-asserted Administrative Expense Claim(s). If the Debtors do not have a specific Administrative Expense Claim amount on file for you, the box in Item 1 of this Opt-In Ballot will be blank. For reference purposes, you should insert the relevant amount of your alleged Administrative Expense Claim; however, for the avoidance of doubt, this Opt-In Ballot is not to be used to assert your Administrative Expense Claim(s). For more information about asserting an Administrative Expense Claim(s), visit the Debtors' case

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**Item 2. Administrative Expense Claims Consent Program Election.** You may elect to opt-in to the Administrative Expense Claims Consent Program by checking the box below and returning this Opt-In Ballot to the Claims and Noticing Agent on or before the Opt-In/Opt-Out Deadline pursuant to the instructions set forth herein. If you return this Opt-In Ballot but do not check the box below or do not return this Opt-In Ballot, you will not be entitled to the Initial Distribution. If you submit multiple Opt-In Ballots, your last timely received Opt-In Ballot shall control. Election to withhold consent is at your option.



**THE HOLDER OF THE ADMINISTRATIVE EXPENSE CLAIM(S) SET FORTH IN  
ITEM 1 ELECTS TO OPT-IN TO THE ADMINISTRATIVE EXPENSE CLAIMS  
CONSENT PROGRAM.**

**Item 3. Acknowledgments.** By signing this Opt-In Ballot, the undersigned Holder of an Administrative Expense Claim(s) identified in Item 1 above certifies that (i) it is the Holder of the Administrative Expense Claim(s) identified in Item 1 above or (ii) it has full power and authority to act on behalf of the Holder of the Administrative Expense Claim(s) identified in Item 1 above.

**VIR VENTURES, INC.**

Name

Social Security or Federal Tax I.D. No. (optional)

**Signature:** Salene Mazur Kraemer, Esquire  
Salene Mazur Kraemer, Esquire (Nov 18, 2019)

**Email:** salene@mazurkraemer.com

Signature

**Salene Mazur Kraemer, ESQ**

If by Authorized Agent, Name and Title

**MAZURKRAEMER BUSINESS LAW**

Name of Institution

**331 JONQUIL PLACE**

Street Address

**PITTSBURGH PA 15228**

City, State, Zip Code

**412-427-7075**

Telephone Number

**SALENE@MAZURKRAEMER.COM**

Email Address

**11.18.2019**

Date Completed

**If you elect to opt-in to the Administrative Expense Claims Consent Program, please return your Opt-In Ballot promptly.** If you have any questions regarding this Opt-In Ballot or the procedures for opting out, please contact the Debtors' Claims and Noticing Agent, by: (a) visiting the Debtors' restructuring website at: <https://restructuring.primeclerk.com/sears>; (b) writing to Sears Admin. Claims Consent Prgm Ballot Processing, c/o Prime Clerk LLC, 850 Third Avenue, Suite 412, Brooklyn, New York 11232; and/or (c) emailing [searsinfo@primeclerk.com](mailto:searsinfo@primeclerk.com).

If the Claims and Noticing Agent does **not** actually receive the Opt-In Form on or before November 18, 2019, at 4:00 p.m., prevailing Eastern Time indicating your intent to opt-in to the Administrative Expense Claims Consent Program (and if the Opt-In/Opt-Out Deadline is not extended), your opt-in election will not be effective.

website: <https://restructuring.primeclerk.com/sears>. The Debtors reserve the right to dispute and validate the amount of your asserted Administrative Expense Claim(s).

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**EXHIBIT B**

**OPT-OUT BALLOT**

SRF 36417

Voter ID: 716497

**PLEASE FOLLOW THESE INSTRUCTIONS FOR SUBMITTING YOUR OPT-OUT ELECTION. IF YOU ELECT TO OPT-OUT OF THE ADMINISTRATIVE EXPENSE CLAIMS CONSENT PROGRAM, PLEASE COMPLETE, SIGN, DATE, AND TRANSMIT THIS OPT-OUT BALLOT SO THAT IT IS ACTUALLY RECEIVED BY THE CLAIMS AND NOTICING AGENT ON OR BEFORE NOVEMBER 18, 2019, AT 4:00 P.M. (PREVAILING EASTERN TIME)**

**IF YOU WOULD LIKE TO RECEIVE THE BENEFITS OF THE ADMINISTRATIVE EXPENSE CLAIMS CONSENT PROGRAM AND DO NOT WISH TO OPT-OUT OF THE ADMINISTRATIVE EXPENSE CLAIMS CONSENT PROGRAM, YOU DO NOT NEED TO TAKE ANY FURTHER ACTION AT THIS TIME.**

**YOU MAY RETURN YOUR OPT-OUT BALLOT IN THE PRE-ADDRESSED, PRE-PAID RETURN ENVELOPE PROVIDED OR VIA FIRST CLASS MAIL, HAND DELIVERY, OR OVERNIGHT COURIER, TO:**

**SEARS ADMIN. CLAIMS CONSENT PRGM BALLOT PROCESSING  
C/O PRIME CLERK LLC  
850 THIRD AVENUE, SUITE 412  
BROOKLYN, NEW YORK 11232**

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SRF 36417

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\$ 185576

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**VIR VENTURES, INC.**

Name

Social Security or Federal Tax I.D. No. (optional)

**Signature:** Salene Mazur Kraemer, Esquire  
Salene Mazur Kraemer, Esquire (Nov 18, 2019)

**Email:** salene@mazurkraemer.com

If by Authorized Agent, Name and Title

**Salene Mazur Kraemer, ESQ**

Name of Institution

**MAZURKRAEMER BUSINESS LAW**

Street Address

**331 JONQUIL PLACE**

City, State, Zip Code

**PITTSBURGH PA 15228**

Telephone Number

**412-427-7075**

Email Address

**11.18.2019**

Date Completed

<sup>1</sup> This amount should represent the amount of your previously-asserted Administrative Expense Claim(s). If the Debtors do not have a specific Administrative Expense Claim amount on file for you, the box in Item 1 of this Opt-Out Ballot will be blank. For reference purposes, you should insert the relevant amount of your alleged Administrative Expense Claim; however, for the avoidance of doubt, this Opt-Out Ballot is not to be used to assert your Administrative Expense Claim(s). For more information about asserting an Administrative Expense Claim(s), visit the Debtors' case website: <https://restructuring.primeclerk.com/sears>. The Debtors reserve the right to dispute and validate the amount of your asserted Administrative Expense Claim(s).

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# EBallot\_182353801040864\_DXVJC28612

Final Audit Report

2019-11-18

Created:	2019-11-18
By:	Sears Claims (searsclaims@primeclerk.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA2wDULu8Eg7Jt8Yp33Huf08sZB-_7EuAA

## "EBallot\_182353801040864\_DXVJC28612" History

-  Web Form created by Sears Claims (searsclaims@primeclerk.com)  
2019-11-18 - 8:52:52 PM GMT
-  Web Form filled in by Salene Mazur Kraemer, Esquire (salene@mazurkraemer.com)  
2019-11-18 - 8:54:34 PM GMT- IP address: 71.182.203.19
-  (User email address provided through API User-Agent: Mozilla/5.0 (Macintosh; Intel Mac OS X 10\_14\_6) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/78.0.3904.87 Safari/537.36)  
2019-11-18 - 8:54:37 PM GMT- IP address: 71.182.203.19
-  Signed document emailed to Salene Mazur Kraemer, Esquire (salene@mazurkraemer.com) and Sears Claims (searsclaims@primeclerk.com)  
2019-11-18 - 8:54:37 PM GMT